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ABSTRACT

The House Committee on Education and Labor recommended passage of the Family and Medical Leave Act as amended and submitted the following regarding the legislation: (1) a synopsis of committee action in the 101th, 100th, 99th, and 98th Congresses; (2) background and need for the legislation, based primarily on previous testimony heard by the committee; (3) an explanation of the bill, including a section-by-section analysis; (4) the amendment, which would extend coverage to address the situation of public elementary and secondary school teachers and also clarify some other items; and (5) individual views by Representatives Steve Gunderson, Marge Roukema, and William Gooding. The legislation considered would entitle employees to up to 10 weeks leave over a 2-year period to care for a newborn or newly adopted child or to care for the employee's child or parent who has a serious health condition. Employees would be able to take up to 15 weeks leave per year if they are unable to perform their jobs because of a serious health condition. (CML)

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101ST CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 101-28
Part 1

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FAMILY AND MEDICAL LEAVE ACT OF 1989

APRIL 13, 1989.—Ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY, SUPPLEMENTAL, ADDITIONAL, AND INDIVIDUAL VIEWS

[To accompany H.R. 770 which on February 2, 1989, was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 770) to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition and to temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment appears immediately preceding the Section-by-Section Analysis.

SUMMARY OF PURPOSE

The purpose of this legislation is to entitle employees to family leave in cases involving the birth, adoption or placement for foster care of a child or upon the serious health condition of a child or parent. It also seeks to provide temporary medical leave to employees in cases involving the inability to perform the functions of

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one's position because of a serious health condition. The bill provides employment and benefit protection to employees during the leave period. The bill also establishes a commission to study the effects of such leave, particularly on small businesses.

INTRODUCTION

H.R. 770 addresses a profound change in the composition of the workforce that has had a dramatic effect on families. Sixty percent of all mothers are currently in the labor force, which is three times what it was thirty years ago. In the great majority of families today, all of the adult members work. The role of the family as primary nurturer and care-giver has been fundamentally affected by a new economic reality. Families are struggling of find a way to carry out the traditional role of bearing and caring for children and providing the emotional and physical support to their members during times of greatest need. When families fail to carry out these critical functions, the societal costs are enormous.

In order to help families cope with the new work place reality, H.R. 770 establishes a minimum standard that assures employees the availability of unpaid leave with job protection under special circumstances. It makes available to employees, up to 10 weeks of leave over a 2-year period, to care for a newly born or adopted child, or to care for an employee's child or parent with a serious health condition. Employees are also able to take up to 15 weeks a year of leave if they are unable to perform their jobs because of a serious health condition.

The adjustments this legislation may sometimes require of employers are offset by savings in medical and child care costs as well as the broad societal benefit of strengthened families. Employers also benefit directly from the retention of loyal and skilled employees, including savings on recruitment, hiring, and training costs and improved employee morale. Finally, the bill will help reduce the cost to both government and private charities of picking up the pieces when families fall apart.

An unpaid leave requirement is a cost-effective means of dealing with the essential concern of helping families to survive. H.R. 770 is based on the belief that if families are to continue performing their care-giving role, the minimum standards for family and medical leave established in the bill are essential.

COMMITTEE ACTION

Legislative action in the 101st Congress

On February 2, 1989, Representatives William Clay (D-Missouri), Marge Roukema (R-New Jersey) and Patricia Schroeder (D-Colorado) introduced H.R. 770, the Family and Medical Leave Act. The bill was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service. H.R. 770 has been cosponsored by more than 150 Members of Congress.

On February 7, 1989, the Education and Labor Subcommittee on Labor-Management Relations held a legislative hearing on the Family and Medical Leave Act. Testimony was presented by the

General Accounting Office, interested individuals, academics, union officials and business representatives.

The Subcommittee on Labor-Management Relations met to mark-up the bill on February 28, 1989. H.R. 770 was favorably reported, without amendment, by a vote of 11 to 5.

On March 8, 1989, the Committee on Education and Labor ordered H.R. 770, as amended, favorably reported by a vote of 23 to 12. The Committee approved amendments to extend coverage of the bill to include employees of the U.S. Congress and to create special rules to address the unique situation of public elementary and secondary school teachers and other clarifying amendments.

In the Senate, a similar bill, S. 345, was introduced by Senator Christopher Dodd (D-Connecticut) on February 2, 1989. The bill was referred to the Committee on Labor and Human Resources. The Subcommittee on Childern, Family, Drugs and Alcoholism held a legislative hearing on S. 345 on February 2, 1989. Testimony was presented by interested individuals, academics, state officials and business representatives.

Legislative action in the 98th, 99th and 100th Congresses

Prior to the introduction of family and medical leave legislation, the Select Committee on Children, Youth, and Families, during 1984, conducted a comprehensive investigation of the issues involving families and child care. The Select Committee issued a report, entitled "Families and Child Care: Improving the Options", based upon the testimony of 160 witnesses at hearings held across the country. The Select Committee unanimously recommended that Congress review improving current leave policies, including the issue of job continuity.

On April 4, 1985, Representative Patricia Schroeder introduced H.R. 2020, the Parental and Disability Leave Act of 1985. H.R. 2020 required that employees be allowed parental leave in cases involving the birth, adoption or serious illness of a child and temporary disability leave in cases involving the inability to work due to non-occupational medical reasons. The bill was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

The Education and Labor Subcommittees on Labor-Management Relations and Labor Standards and the Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a joint oversight hearing on the issue of parental and disability leave on October 17, 1985. Testimony was presented by individuals, government officials, public interest and civic organizations, academics, labor representatives and corporate officials.

On March 4, 1986, Representatives Clay and Schroeder introduced H.R. 4300, the Parental and Medical Leave Act, a bill to entitle employees to parental leave in cases involving the birth, adoption or serious health condition of a son or daughter and temporary medical leave in cases involving the inability to work because of a serious health condition. The bill superseded H.R. 2020 and was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

On April 9, 1986, Senator Christopher Dodd introduced S. 2278, the Parental and Medical Leave Act in the Senate. S. 2278 was referred to the Committee on Labor and Human Resources.

The Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a joint legislative hearing on the bill on April 9, 1986. Testimony was presented by Federal Government employees speaking as individuals, child care experts and union representatives.

On April 22, 1986, the Education and Labor Subcommittees on Labor-Management Relations and Labor Standards held a joint legislative hearing on H.R. 4300. Testimony was presented by individuals, child care experts, public interest organizations, union officials, and business representatives.

On May 8, 1986, the Subcommittee on Compensation and Employee Benefits, by voice vote, ordered H.R. 4300 favorably reported. On June 11, 1986, the Committee on Post Office and Civil Service, by a rollcall vote of 18 to 0, ordered H.R. 4300 favorably reported (H. Rept. 99-699 part 1).

On June 12, 1986, the Subcommittee on Labor-Management Relations ordered H.R. 4300 favorably reported by a rollcall vote of 8 to 6. On June 24, 1986, the Commission on Education and Labor ordered H.R. 4300, as amended, favorably reported. An amendment in the nature of a substitute, offered by Congresswoman Roukema, was rejected by a vote of 13 to 19. An amendment in the nature of a substitute, offered by Subcommittee on Labor-Management Relations Chairman Clay, was adopted by the Committee by a rollcall vote of 22 to 10. The Committee favorably ordered reported H.R. 4300, as amended, by voice vote (H. Rept. 99-669 part 2).

The Committee on Rules approved an open rule for floor consideration of H.R. 4300 on September 17, 1986 (H. Res. 552). The 99th Congress adjourned before any further action on H.R. 4300 was taken.

On February 3, 1987, Representatives William Clay (D-Missouri) and Patricia Schroeder (D-Colorado) introduced H.R. 925, the Family and Medical Leave Act, a bill to provide unpaid family leave to employees upon the birth or adoption of a child or to care for a seriously ill child or parent and temporary unpaid medical leave for an employee's own serious health condition. The bill was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

Joint legislative hearings were conducted by the Committee on Education and Labor Subcommittees on Labor-Management Relations and Labor Standards on February 25, and March 5, 1987. Testimony was presented by members of Congress, interested individuals, public interest and civic organizations, academics, union officials and business representatives.

On May 13, 1987, the Subcommittee on Labor-Management Relations favorably reported H.R. 925 by voice vote. On November 17, 1987, the Committee on Education and Labor ordered H.R. 925, as amended, favorably reported. The Committee approved an amendment in the nature of a substitute to H.R. 925, offered by ranking subcommittee minority member Marge Roukema (R-New Jersey), and approved the bill as amended by the substitute, by a rollcall vote of 21 to 11 with 1 member voting present. All other amendments to H.R. 925 were rejected.

The Committee on Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a

legislative hearing on April 2, 1987. Testimony was presented by the Office of Personnel Management, the General Accounting Office, interested individuals, and Federal employee union representatives. The Subcommittee on Civil Service approved H.R. 925, without amendment, by a vote of 3 to 0, on May 5, 1987. The Subcommittee on Compensation and Employee Benefits approved H.R. 925, without amendment, by voice vote, on May 19, 1987. The Committee on Post Office and Civil Service ordered H.R. 925 favorably reported, without amendment, by voice vote, on February 3, 1988.

In the Senate, a bill similar to the Family and Medical Leave Act, S. 249, was introduced by Senator Christopher Dodd (D-Connecticut) on January 6, 1987. The bill was referred to the Subcommittee on Children, Family, Drugs and Alcoholism and the Subcommittee on Labor of the Committee on Labor and Human Resources. The Subcommittee on Children, Family, Drugs, and Alcoholism held seven legislative hearings on S. 249; three in Washington, D.C. on February 19, April 23, and October 29, 1987 and four regional hearings on June 15 in Boston, Massachusetts, July 20 in Los Angeles, California, September 14 in Chicago, Illinois and October 13 in Atlanta, Georgia. Testimony was presented at each of the hearings by Members of Congress, interested individuals, state and local government officials, civic and advocacy organizations, academics, union officials and business representatives. At the end of the 100th Congress, S. 249 was brought before the full Senate for consideration. After several days of debate, the bill was withdrawn from consideration because of the failure to win a cloture vote that would have ended a fillibuster against the bill.

Background and Need for Legislation

Private sector practices and government policies have failed to keep pace with recent economic and social changes that have significantly intensified the tensions between work and family. This failure continues to impose a heavy burden on families, employees, employers and society as a whole. H.R. 770 provides a sensible response to the growing conflict between work and family by establishing a right to unpaid family leave and temporary medical leave for all workers.

The need for family leave

The United States has experienced what can only be characterized as a demographic revolution in the composition of its workforce, with profound consequences for the lives of working men and women and their families. Today, according to the Bureau of Labor Statistics, 96 percent of fathers and more than 60 percent of mothers work outside the home. The participation of women in the labor force has risen from 19 percent in 1900 to more than 52 percent today; 44 percent of the U.S. labor force are now women. Between 1950 and 1980, the labor force participation rate of mothers tripled. The fastest growing segment of this group is comprised of women with children under the age of 3. Over 52 percent of all mothers with children under one year of age are now working outside of the home, up from 43 percent just 5 years ago and 32 percent 10 years ago. More than half of all children in two-parent fam-

ilies have both parents in the work force. The once typical family where dad worked outside of the home to support mom and two children is found in only 3.7 percent of the Nation's families.

Equally dramatic is the unprecedented divorce rate of 50 percent and the increase in out-of-wedlock births, which has left millions of women to struggle as heads of households, supporting themselves and their children. Women represent the sole parent in 16 percent of all families. Eighty percent of all divorced mothers and 56 percent of unmarried mothers work outside the home. The majority of these women workers remain in female intensive, relatively low paid jobs and are less likely than men to have adequate job protections and benefits. Each of these phenomena, which affect women of all races, are most pronounced for black and other minority women. Single women heads of households, who work full time in the labor force, often cannot keep their families above the poverty line.

Another demographic change relevant to the leave needs of all employees, involves the growing number of elderly in our society. Currently, more than 2.2 million family members provide unpaid help to ailing relatives, the most common caregiver being a child or spouse. About 38 percent of those caring for elderly relatives are children, and 35 percent are spouses. The average age of persons caring for elderly family members is 57 years.

Similarly, the percentage of adults in the care of their working children or parents due to physical and mental disabilities is growing. There is a trend away from institutionalization, which has been shown to be cost ineffective and often detrimental to the health and well-being of persons with mental and physical disabilities. Although independent living situations are often preferable, deinstitutionalization can result in increased care responsibilities for family members, many of whom are also of necessity wage earners. This trend toward home care is laudable because of the strong benefits it provides to the health and well-being of families; however, it can also add to the tension between work demands and family needs.

The significance of these demographic changes is apparent. Where men and women alike are wage earners, the crucial unpaid caretaking services traditionally performed by wives—care of young children, ill family members, aging parents—has become increasingly difficult for families to fulfill. Yet these functions—physical caretaking and emotional support, are often performed best by families. Indeed, in many instances, only families can perform them adequately. Society has long depended on the family to meet these needs and being able to provide such care has supported and strengthened families. Depriving families of their ability to meet such needs seriously undermines the stability of families and the well-being of individuals, with both economic and social costs. Yet today, at a magnitude significantly greater than ever before, American business requires the services of women and men alike. Modern families have made painful sacrifices to adopt to the needs of business and to the demands of wage earning. Business must make some modest accommodations to the needs of working families, in order to preserve the most essential of the traditional functions of the family.

The testimony of individual working people before the Subcommittee on Labor-Management Relations demonstrated the difficulties faced by today's working families. Over the past 4 years, the members of the Subcommittee have heard testimony from working men and women who have been denied leave to care for newborn, newly adopted or sick children or elderly parents.

Mrs. Beverly Wilkinson was working for a large Atlanta based corporation when she became pregnant with her first and only child. She requested, and was granted, 5 weeks maternity leave without pay and 2 weeks accrued vacation leave with pay. During her leave period, Mrs. Wilkinson spoke with her office weekly and there was never a hint that there would be a problem with her reinstatement. However, the day before she was to return to work she was informed that her position had been eliminated. In testimony before the Subcommittee she stated:

> I was stunned. I felt betrayed. I had invested five years of my life in this company. I had helped (my department) grow from a ten person division to a division of over forty people . . . A woman should not have to choose between her job and becoming a mother and a couple should not be punished for becoming a family . . . Our government has lost sight when it comes to the working family. As a working mother, I feel that I have very little representation on this matter . . . We must bring our public policy in line with current reality of the 1980's when a two income family is the norm, not the exception.

Ms. Lorraine Poole, an employee of a large municipality, testified to her heartbreak when she could not accept a long-awaited adoptive baby that had become available to her. Her employer had told her that she would lose her job if she took time off from work to receive the child and the adoption agency would not place the child unless assured that she would take some time off to be with the child. Ms. Poole was left with no choice but to decline the placement.

Ms. Iris Elliot, described to the Subcommittee the difficulties she faced as a full-time worker with a preschool aged son and a seriously ill infant. Her employer, a national corporation, had no family leave policy. Ms. Elliot was offered a 90 day personal leave, without pay or job protection, but she could not risk losing her position or health benefits as the sole medical insurance carrier for her family. She concluded her testimony by saying: "No parent should ever have to be torn between nurturing their serioulsy ill child and reporting to work like I did."

Ms. Joan Curry lost her job when she failed to balance the responsibilities of work and caring for an elderly parent to her employer's satisfaction. Ms. Curry was a clerical worker for a major university in the District of Columbia when her mother, who suffers from Alzheimer's Disease, moved from New York City to live with her. A novice at eldercare, Ms. Curry had a difficult time finding support help, a doctor and day care. Because most of the services she needed had office hours of 9 to 5, Ms. Curry frequently needed to take long lunch hours and make personal calls during her own working hours. Though she had explained her situation to

her supervisor, Ms. Curry was fired because her morning tardiness, long lunch breaks and personal calls (all done for the purpose of obtaining proper care for her mother) were felt to be a negative influence on her coworkers. Ms. Curry stated before the Subcommittee:

> I was experiencing the nightmare of wanting to do my best. I wanted to provide the best reasonable care for my sick mother and I wanted to provide top-quality productivity for my employer. Unfortunately I could not have both . . . The feeling of rejection and failure that stems from being told to leave a job is an incredible strain, but the fact that I could not afford to be out of work . . . The Family and Medical Leave Act would have given me the time and reduced the stress in learning how to properly handle my mother's care. Most times, caregiving responsibilities can not be carried out without the understanding of an employer and the time off from work.

Men are equally at risk of losing their jobs when they request family leave. Mr. David Wilt of York, Pennsylvania, told the Subcommittee how he lost his job when he needed a few days of leave to take his recently adopted 2-month-old daughter with Downs syndrome to Children's Hospital in Washington, DC, more than 100 miles away, for major heart bypass surgery. Mr. Wilt, a baker, had arranged with his employer to take 3½ days off, but on the day before his scheduled leave he was told if he left he would be fired. Mr. Wilt was unable to find another job and had no choice but to stay home and takes care of his two handicapped children while his wife was employed full time.

Stephen F. Webber, a coal miner and member of the executive board of the United Mine Workers of America, after describing his union's efforts to negotiate for family leaves, stated:

> Caring for a seriously ill child presents special problems to working miners. Treatment centers for serious illnesses such as cancer are often located in urban centers, forcing families in rural communities to travel great distances. I think in particular, of one coal miner I know, whose child has cancer, and who must travel nearly 400 miles round trip each month from his rural home to take his child for treatment at a medical center in Morgantown, West Virginia.

His testimony included other compelling examples, including that of a miner whose 5-year-old son became comatose after choking on a piece of food and required 24-hour-a-day care, care that the miner, a single parent and sole wage earner, had to provide or arrange.

Experts who testified before the Subcommittee confirmed the importance of family leaves. Dr. Eleanor S. Szanton, executive director of the National Center for Clinical Infant Programs, testified:

> While children require careful nurturing throughout their development, the formation of loving attachments in the earliest months and years of life creates an emotional "root system" for future growth and development. How

> are these attachments formed? Through the daily feeding, bathing, diapering, comforting and "baby talk" that are all communications of utmost importance in beginning to give the child the sense that life is ordered, expectable and benevolent. . . . In short, these factors affect the baby's cognitive, emotional, social and physical development . . . Once parents and babies do establish a solid attachment to each other, the transition to work and child care is likely to be easier for parents and for the child. Parents who have cared for their infant for several months are likely to understand a good deal about their child's unique personality and the kind of caregiver or setting which will be most appropriate. Babies, for their part, who have already begun the process of learning to love and trust their parents are better able to form—and to use—trusting, warm relationships with other adults.

Dr. T. Berry Brazelton, chief of the Child Development Unit at Boston's Children's Hospital and associate professor of pediatrics at Harvard, testified before the Subcommittee of the importance of granting new parents leave for purposes of developing strong initial attachments with their newborn or newly adopted baby, a process which he refers to as "bonding". He stated:

> When parents are deprived too early of the opportunity to participate in the baby's developing ego structure, they lose the opportunity to understand the baby intimately and to feel their own role in development. . . . We need to prepare working parents for their roles in order to preserve the positive forces in strong attachments—to the baby and to each other. We certainly must protect the period in which the attachment process is solidified and stabilized by new parents. With the new baby, this is likely to demand at least four months. . . . As a nation, we can no longer afford to ignore our responsibilities toward children and their families.

Meryl Frank, director of the Infant Care Leave Project of the Yale Bush Center in Child Development and Social Policy, reported to the Subcommittee on the 1986 conclusions and recommendations of the Project's Advisory Committee on Infant Care Leave. The Advisory Committee echoed the views of Dr. Brazelton and Dr. Szanton, and concluded that the "infant care leave problem in the United States is of a magnitude and urgency to require immediate national action." The Advisory Committee, whose members include academics and professionals in child development, health and business, recommended a 6 month minimum leave, with partial income replacement for the first 3 months and benefit continuation and job protection for the entire leave period.

The Subcommittee was also provided the recommendations of the Economic Policy Council of the United Nations Association of the United States of America [EPC]. During 1984, the EPC, which is comprised of corporate executives, union presidents and academics, studied the economic and demographic trends transforming the family and the labor force and issued a report in December of 1985 of its findings, entitled "Work and Family in the United States: A

Policy Initiative." The EPC recommended a 6 to 8 week job protected maternity leave, with partial income replacement; a 6 month unpaid, but job protected, parental leave; job protected disability leave for all workers; the provision of temporary disability insurance to all workers; and the establishment of a national commission on contemporary work and family patterns.

The extent of existing family leave policies

Many aspects of family leave, particularly those relating to pregnancy and parenting, have been extensively studied. However there is still no comprehensive study of the range of family leaves provided by American businesses. Many employers provide "personal leave" which is available for family crises such as the serious illness or death of a child or parent. Such leave is almost universally unpaid and discretionary. Employees sometimes are able to use vacation leave (a benefit that is usually paid) at times of such crisis. Only a small percentage of employers have policies providing a leave specifically for purposes of caring for ill-family members.

There has been considerable study of those aspects of family and medical leave relating to pregnancy, maternity and less frequently, paternity. Such leave has been the subject of litigation since the early 1960's, based upon constitutional claims and Title VII of the Civil Rights Act of 1964, as women workers sought equal treatment in the work place. The amendment to title VII in 1978, by the Pregnancy Discrimination Act [PDA], has had an especially significant impact on the perception of women as wage earners and on the availability and nature of both parental and medical leave. Under the PDA, an employer is prohibited from discriminating on the basis of pregnancy, childbirth and related medical conditions. The PDA further provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. sec. 2000e-k.

This language requires that employers adhere to two basic principles. First, they must permit physically fit pregnant employees to continue to work just as any other physicaly fit employee would be permitted to work (traditionally, women were terminated or placed on mandatory unpaid leave early in pregnancy). Second, when a woman becomes physically unable to work because of a complication of pregnancy or due to childbirth and the recovery period following chidbirth, she is entitled to the same sick leave, disability leave, health insurance or other benefit that is extended to other employees who, because of a physical condition, are unable to work.

The result has been that employers, to comply with the law, permit pregnant women to work unless or until they are unable to work and then provide whatever compensation or leaves they provide to other employees temporarily unable to work for medical reasons. As a practical matter, many pregnant employees work until they give birth and then are on medical leave (paid if the employer compensates other disabled workers or if there is a State Temporary Disability Insurance program) for the physical recovery period following childbirth (typically 6 to 8 weeks). Some employers

provide an additional unpaid leave period following disability to allow a parent to stay home with a new baby. This additional "parental leave", if given, must, under Title VII, be available to parents of either sex. (Equal Employment Opportunity Commission [EEOC] Compliance Manual section 626.6; *see also, Ackerman* v. *Board of Education of the City of New York*, 387 F. Supp. 76 (7th Dist. N.Y. 1974).)

In response to the influence of the PDA, thousands of companies have reevaluated their personnel practices and implemented policies responsive to the needs of their changed workforces. In addition, the five States which provide temporary wage replacement under a State temporary disability insurance program (California, New Jersey, New York, Rhode Island and Hawaii) now cover pregnancy and childbirth related work disabilities. These longstanding state programs have proven to be both successful and cost-effective wage replacement systems for workers who are unable to perform their jobs due to non-work related illnesses, injuries or other medical reasons.

Several recent studies on parental leave policies have been presented to the Subcommittee. The National Council of Jewish Women Center for the Child conducted a survey on leave policies in 1987. The survey was conducted in 100 communities across the country and included responses from over 2000 employers of all sizes. The NCJW study separated the experiences of employers with fewer than 20 employees and those with 20 or more employees. The study found that 72 percent of women at firms of 20 or more and 51 percent of women at firms with under 20 employees receive a minimum of 8 weeks of job protected medical leave for pregnancy. Almost 40 percent of all of the surveyed employers also provide an additional period of family leave to women. Although the differences in the provision of medical leave for pregnancy were significant for smaller and larger employers, there was little difference in the provision of family leave between varying sizes of employers.

These studies supplement the findings of two earlier surveys which focused on the policies of medium and large sized firms. Catalyst, a national non-profit research organization, conducted a survey of the policies of Fortune 1500 companies and issued its *Report on a National Study of Parental Leaves* in 1986. The Catalyst survey focused only on the country's largest companies, which tend to provide more generous policies than employers generally. Catalyst reported that 95 percent of the survey's respondents offered shoft-term disability or medical leave during a worker's (including a pregnant worker's) period of inability to perform his or her job; almost all with full or partial pay. 51.8 percent of the responding companies offered some unpaid leave to women for parenting (as distinct from the disability leave) and guaranteed their right to return; 40 percent to the same job, nearly 50 percent to a comparable job. One third of these employers offered 4- to 6-months leave and 7.2 percent offered over 6 months of family leave. Despite the apparent conflict with title VII of the Civil Rights Act, only 37 percent of these companies extended parental leave rights to fathers and often on a different (and less extended) basis than to

mothers. Additionally, only 27.5 percent of the respondents offered benefits to workers who adopt children.

The Catalyst survey found that approximately 75 percent of the companies granting family and medical leave reported the work of employees on leave and a large percentage of the companies hired temporaries to supplement their rerouting strategy or to fully take over the absent employee's work. Significantly, 86.4 percent of the respondents stated that providing leave and arranging to continue benefits was relatively easy. As part of its report to corporations, Catalyst recommended that companies provide disability leave, with full or partial pay, and unpaid parental leave for up to 3 months, with reinstatement to the same or comparable position after they leave.

A survey of 1,000 small and medium sized firms, conducted in 1981 by Sheila Kamerman and Alfred Kahn of the Columbia University School of Social Work, provides an important companion to the Catalyst study. According to Kamerman and Kahn, less than 40 percent of all working women received paid disability leave for the six to eight week recovery period after childbirth. This figure, which is far lower than the Fortune 1,500 figures reported by Catalyst, apparently reflects the fact that small and medium size employers are less likely to provide disability benefits. (These findings may also reflect the earlier survey date of the Columbia Study, which was undertaken much closer in time to the April 1979 effective date of the PDA than was the Catalyst survey; smaller employers may not yet have adjusted their policies at the time of the first survey.) Eighty-eight percent of the companies provided "maternity" leave, but only 72 percent formally guaranteed the same or comparable job and retention of seniority.

The most recent study on parental leave was conducted by the Bureau of Labor Statistics and was issued April 4, 1989. The BLS survey finds that 33 percent of employees working in medium and large private businesses are provided "maternity leave" and 16 percent are covered by unpaid "paternity leave". Such leave is defined in the study as leave to care for a newborn child and does not include other kinds of leave such as leave for short-term disabilities and paid vacation, which also might be used for this purpose. The 1988 survey provides representative data for thirty one million workers in private nonagricultural establishments with 100 or more employees. These figures represent virtually no change from a similar study conducted by BLS in 1986. The study shows that since 1986 there has been no increase in the number of employers providing parental leaves.

The BLS study also finds that only 5 percent of employees are covered by flexible benefit or cafeteria plans. These figures clearly refute the argument that the "recent trend" toward cafeteria style benefit plans make FMLA unnecessary. Such plans, according to the most recent data, cover at most one in twenty workers.

These studies taken together indicate that while many employers permit parental leaves, a substantial percentage of employers of all sizes have yet to adopt such policies. They show that while many employers have found providing such leave makes good business sense, there remains a significant need for a minimum standard on family and medical leave.

The need for temporary medical leave

The need for a temporary medical leave policy arose long before the fundamental changes in the workforce previously discussed. Workers and their families have always suffered inordinately when fired for medical reasons. However, the changed demographics have dramatically added to the harm caused by the lack of such a policy. The traditional family which depended on the salary of a sole wage earner was and is severely affected by the loss of the ill-worker's job. But while this family has traditionally had a second parent available to help meet such emergencies, today a new class of workers exists without such backup support: single heads of household, who are predominately women workers in low-paid jobs. For these women and their children, the loss of the women's job when she is sick can have devastating consequences.

A poignant example of the harm inflicted when a seriously ill person is fired was recounted at the Subcommittee hearings by Frances Wright. Despite 10 years of exemplary service as a retail manager of a clothing store in Virginia, she was fired after developing cancer of the colon. She initially needed 3 months off for surgical procedures. Later, although she made every effort to accommodate the employer's needs by scheduling chemotherapy treatments on weekends (keeping work loss to 1 day), and although she had been absent from work only two other times (for a total of 3 weeks), in her ten years with the company, she was fired. The company did agree to pay her disability benefits and told her to file for Social Security disability benefits, despite the fact that her doctor believed she was able to work (an assessment with which Social Security agreed). The insurance company told her she could not work or she would lose her disability benefits. The 2-year interval before she was finally able to find new work was extremely difficult for her. As she said:

> Because of my illness, I lost my job, my self-esteem, my job satisfaction, as well as the continuity of a salary and benefits as a result of my job performance and senority. I was angry and frustrated. I had to fight against becoming bitter. I had to fight to keep my enthusiasm, vitality and desire to lead a productive and meaningful life based on my own self-motivation and productivity.

Subsequent events in the account of Ms. Wright reveal that companies that have fired workers with serious health conditions are often able to take a more generous approach. When Ms. Wright's company was taken over by a new owner, she was hired back. This time, when she had a recurrence of the cancer, she received 5 weeks of paid leave, and took her leave with the emotional and financial security of knowing her job was not at risk. In short, companies can comply with this legislation. Indeed, the Committee views this legislation as ultimately helping to reduce the individual, family, employer, and societal costs of serious health conditions.

There are many similar stories of pregnant workers who have been fired when their employers refused to provide an adequate leave of absence. Just when a mother faces increased medical and

family expenses from the arrival of a new baby, she is forced out of the labor market.

There are human and economic costs to the individual, the family, the employer and society when workers with serious health conditions are fired. The individual already beset with difficult medical problems must simultaneously face the loss of a job, salary, and benefits. Families are especially hard hit as they struggle to meet increased expenses with decreased or no income, single parent families having the greatest difficulty.

The evidence suggests that only a minority of firms actually take the harsh termination approach to such workers—further undermining the claim that this bill imposes unsupportable costs on employers. Rather, most employers can and do see that it is in their own economic interest to retain employees. A 1983 Bureau of National Affairs [BNA] report on personnel policies was particularly instructive. More than 90 percent of the firms surveyed in the report had specific provisions for unpaid medical leaves of absence. The Bureau of National Affairs, Inc., Personnel Policies Forum, *Policies on Leave From Work* (June 1983). Further, among employer's with provisions permitting unpaid personal leaves of absence, the employee's extended physical health problems were cited as the most common reason for granting such a leave. This is the very circumstance contemplated by the temporary medical leave provisions in the bill. Close to 80 percent of the firms allowed unpaid personal leaves for medical reasons, with nearly as high a proportion permitting unpaid leaves for alcohol or drug abuse rehabilitation, or mental health problems. Moreover, the vast majority of firms permitted unpaid leave in excess of 5 months.

Data supportive of the BNA results come from the 1986 report by Catalyst, *Report on a National Study of Parental Leaves.* The Catalyst survey revealed that many employers go beyond the requirements of this legislation by providing paid medical leave. Ninety-five percent of the companies surveyed by Catalyst grant short-term disability leave (38.9 percent fully paid, 57.3 percent partially paid, and 3.8 percent unpaid); 90.2 percent of them continue full benefits during the period; 80.6 percent of them guarantee the same or a comparable job. For these companies, leave length appears to be tied to the employee's medical condition.

Equal Protection and Non-Discrimination

The FMLA addresses the basic leave needs of all employees. It protects employees from possible job loss as a result of a serious health condition, childbirth or the care of a seriously ill family member. It does not favor the needs of one class of employee over the needs of other employees. This is an important concept in the bill.

A law providing special protection to women or any narrowly defined group, in addition to being inequitable, runs the risk of causing discriminatory treatment. Employers might be less inclined to hire women or some other category of worker provided special treatment. For example, legislation addressing the needs of pregnant women only would give employers an economic incentive to discriminate against women in hiring policies; legislation addressing the needs of all workers equally does not have this effect. The

FMLA avoids providing employers the temptation to discriminate by addressing the serious leave needs of all employees.

Recent studies provided to the Committee indicate that men and women are out on medical leave approximately equally. Men workers experience an average of 4.9 days of work loss due to illness or injury per year, while women workers experience 5.1 days per year. The evidence also suggests that the incidence of serious medical conditions that would be covered by medical leave under the bill is virtually the same for men and women. Employers will find that women and men will take medical leave with equal frequency.

The bill will provide no incentive to discriminate against women, because it addresses the leave needs of workers who are young and old, male and female, married and single. The legislation is based not only on the Commerce Clause, but also on the guarantees of equal protection and due process embodied in the Fourteenth Amendment.

Employers benefit from providing family and medical leave

Employers who provide family and medical leave recognize the significant benefits of such a policy. Ms. Jeanne F. Kardos, director of employee benefits at Southern New England Telephone, testified in support of the bill. She stated:

> Women with children are in the work force to stay. Whether they are single parents or not, they have special needs involving pregnancy and child-rearing. We've also responded in a heretofore ignored group—fathers who want to be involved with full-time child-rearing at some point after birth or adoption . . .
>
> One of the most important concerns we share with our employees is an interest in their careers. It is clear that forcing them to choose between their children and their jobs, or to compromise on either, produces at least one loser—maybe two. Adequate disability and parental leave can solve these problems. The employee returns to the company when he or she is prepared to do so, and the company retains an important asset.
>
> Lastly, we want our benefit plans to be recognized as progressive and competitive. We know that it will help in attracting talented individuals and if they are happy with their benefits, they'll want to stay with us.

Mr. James H. Stever, vice president for human affairs at US West, an international company with three large regional telephone subsidiaries and over 70,000 employees, testified before the Subcommittee. He stated that US West recognizes the role that each employee plays in contributing to the company's success and has developed six different types of leaves to meet the needs of its employees.

While much concern has been expressed about the ability of small employers to provide unpaid leaves, several small business owners have testified before the Committee that the benefits to a small employer outweigh whatever inconvenience or cost may be incurred. Ms. Loretta King, the owner of a small office furniture and supply business and a member of the local chamber of com-

merce in College Station, Texas, expressed her support of the bill from the perspective of a small business owner:

> As a small business owner, it all comes down to one unalterable fact: I know that I have a major investment in each and every one of my employees. . . . I take pride, and have found success, in the manner in which both my customers and my employees are treated. Both of these affect my bottom line. So benefits like family and medical leave, which I know from experience make for happy, productive employees, is a business issue. But it's also a quality of life issue. . . . For every job in our company, at least two people are trained as back-ups. . . . Business owners who don't plan ahead to accommodate these kinds of situations with their employees simply are not smart business owners. Any business can absorb this kind of employee leave with little or no disruption of their normal operations if they just plan ahead. . . . We did not establish these benefits by eliminating others. . . . I give these benefits as a good employer and a smart businesswoman, and I give them with the understanding that this is exactly the way I would expect to be treated if I were an employee. . . . I hope that by passing the Family and Medical Leave Act, Congress will ensure that all business owners will learn the secret to my success.

A recent study, submitted to the Subcommittee by 9 to 5, National Association of Working Women, examined the effect of parental leave on small business. The study used data from the Small Business Administration on private sector employment between 1976 and 1986 to compare States which currently have some form of parental leave policy with the top-ranked "pro-business" States. The study uses a standard definition of a "pro-business" State which includes such factors as low wages and costs, and extent of regulation.

According to the 9 to 5 study, small business employment does considerably better in the parental leave States, growing at a rate of 21 percent greater than small business in the "pro-business" states. The study found employment in firms with fewer than 20 employees grew by 32 percent in parental leave States, compared to 22 percent in the "probusiness" States. Employment in firms of fewer than 50 employees grew by 36 percent in parental leave States, compared to 27 percent in the other States. Total employment in parental leave states grew by 46 percent as opposed to 38 percent in the "pro-business" states. Thus the most direct study on point clearly indicates that the where states have established parental leave standards there has been no adverse impact on the growth of small business.

International and State initiatives on family and medical leave

The inadequacy of existing leave policies is perhaps most clearly seen when the family and related medical leave policies of the United States are compared to those of the rest of the world. With the exception of the United States, virtually every industrialized country, as well as many Third World countries, have national

policies which require employers to provide some form of maternity or parental leave. The United States' major trading partners provide some form of paid leave. Japan requires that employers provide 12 weeks of partially paid maternity leave. In Canada, women can take maternity leave for up to 41 weeks and receive 60 percent of salary for the first 15 weeks. One hundred and thirty five countries provide at least maternity benefits, 127 with some wage replacement. These policies are well established, with France, Great Britain and Italy having had laws requiring maternity benefits prior to World War I. Maternity benefits in these countries are now part of more general paid sick leave laws providing benefits for all workers unable to work for medical reasons. Among the more industrialized countries, the average minimum paid leave is 12 to 14 weeks with many also providing the right to unpaid, job-protected leaves for at least 1 year. Leave is provided either through a national paid sick leave system or as part of a national family policy designed to enhance and support families. These countries are moving rapidly to expand their policies to fathers, as highlighted by the nine European Economic Community countries which now provide parental leaves. Long-established policies around the world stand in marked contrast to the absence in this country of a standard minimum policy for family and medical leave.

Since the introduction of Federal family and medical leave legislation, numerous states have begun to consider similar parental leave initiatives. State initiatives were bolstered by the Supreme Court decision in *California Federal Savings and Loan Association* v. *Guerra*, 479 U.S. 272, 107 S. Ct. 683 (1987), which upheld the right of states to enact pregnancy disability laws. Since 1986, 33 states, including the District of Columbia, considered family and or medical leave legislation. Connecticut has enacted a 24 week family and medical leave law for all State employees. Oregon passed a law providing 12 weeks of unpaid parental leave for the birth or adoption of a child for all workers employed by companies with 25 or more employees. Minnesota passed a 6 week parental leave law for birth or adoption covering workers at firms with 21 or more employees. Rhode Island's law provides 13 weeks of unpaid parental leave for birth, adoption or the serious illness of a child for all workers employed by firms of 50 or more. Maine has recently enacted a law requiring private sector employers with more than 25 employees as well as the State government to grant up to 8 weeks (within a 2-year period) of unpaid family or medical leave, for the birth or adoption of a child or for the serious illness of the employee, child, parent or spouse. Wisconsin's law requires employers of 50 or more and the State government to grant up to 6 weeks of unpaid leave for the birth or adoption of a child, 2 weeks to care for a child, spouse or parent with a serious health condition, and 2 weeks of personal medical leave within a 12 month period. These states join or supplement a number of other states that have adopted laws or regulations protecting the right to maternity leave. (Hawaii, Montana, Connecticut [for private employees], Kansas, New Hampshire, Massachusetts, Washington, California, Iowa, Louisiana, Tennessee and Puerto Rico). Many other states are currently considering similar laws.

The fact that many States have adopted family and medical leave policies and many more are actively considering such laws, highlights the need for a Federal minimum standard to provide uniform and consistent coverage.

The Family and Medical Leave Act sets a minimum labor standard

The Family and Medical Leave Act addresses the new predicament facing families by turning to traditional labor law. It establishes a minimum labor standard for leave to accommodate an overriding societal interest in assisting families. It is based on the same principle as the child labor laws, the minimum wage, Social Security, the safety and health laws, the pension and welfare benefit laws, as well as other labor laws which establish minimum standards for employment. Each of these standards arose in response to specific problems with broad implications. The minimum wage was enacted because of the societal interest in peventing the payment of exploitative wages. Employers were working children for long hours, under unsafe conditions, when the child labor laws were enacted. The Social Security Act was based on the belief that workers should be assured of minimal pension benefits at retirement. The Occupational Safety and Health Act was intended to assure that workers would not be subject to unsafe or unhealthy conditions at work.

There is a common set of principle underlying each of these labor standards. In each instance, a federal labor standard directly addressed a serious societal problem, such as the exploitation of child labor, or the exposure of workers to toxic substances. Voluntary corrective actions on the part of employer were inadequate, with experience failing to substantiate the claim that, left alone, all employers would act responsibly. Finally, each law was enacted with the needs of employers in mind. Care was taken to establish a standard that employers could meet.

It is always a minority to employers who act irresponsibly. Most employers pay a living wage, take steps to protect the health and safety of their work force, and offer their employees decent benefits. A central reason that labor standards are necessary is to relieve the competitive pressure placed on responsible employers by employers who act irresponsibly. Federal labor standards take broad societal concerns out of the competitive process so that conscientious employers are not forced to compete with unscrupulous employers.

The Family and Medical Leave Act was drafted with these principles in mind and fits squarely within the tradition of the labor standards laws which have preceded it. Rather than being a new and untested "mandated benefit" as some critics have claimed, the bill draws on well established principles of labor law. In the past, Congress has responded to changing economic realities by enacting labor standards that are now widely accepted without question. In drawing on this tradition, the FMLA proposes a labor standard to address a significant new reality in today's workplace.

The bill is cost effective

The Family and Medical Leave Act is a cost effective means of supporting and assisting families. This is an important underlying

assumption of the bill. When families fail it is often the public sector that picks up to the tab. Weakened families have been linked to increases in the crime rate, illiteracy, teenage pregnancy, homelessness and other important social problems. In short, many of the major social concerns we face today have been related to family problems. The government has in place extensive social welfare programs, at considerable expense, to deal with each of these social concerns. The FMLA is based on the belief that it is sound and cost effective policy to address a significant cause of these problems rather than to solely address their effects. The bill addresses a problem on which we have spent heavily by proposing a labor standard that will cost us relatively little.

A study was presented to the Committee that measured only a small portion of these costs. In its 1987 study "Costs to Women and their Families of Childbirth and Lack of Parental Leave", the Institute for Women's Policy Research found that the cost to women without leave, in lost wages and longer unemployment, averages $457 per individual over the 2 years after the birth of a child and a total cost of $255 million for all women. The cost to society in transfer payments to women who had or adopted children was estimated at almost $108 million a year.

While the cost to employee, employer and families of not providing leave is clearly significant, the expense to employers of providing leave is by any measure minimal. In response to a request from subcommittee Chairman Clay and ranking minority member Roukema, the General Accounting Office [GAO] conducted a cost estimate of H.R. 770. The GAO found tht the cost of the FMLA is less than $4.50 a year per covered employee, an estimate which they stated probably overstates the actual cost to employers.

Using 1987 census data to determine the number of workers potentially protected by the bill, the GAO conducted a survey of 80 firms in 2 metropolitan labor markets—Detroit, Michigan and Charleston, South Carolina—to obtain data on the practices and experiences of actual employers. The GAO determined that the bill's aggregate cost to all employers with a workforce of more than fifty would be at most $188 million dollars annually. When the bill covers employers of 35 or more the annual cost only increases to $212 million. The GAO found that most of this cost derives from the continuation of health benefits provided for under the bill. Based on existing data and the experience of the surveyed employers, the GAO found that little or no cost will arise from replacing workers on leave nor from losses in productivity. Their survey found that less than one-third of all workers who take leave are replaced and when they are replaced, the costs were either similar to or less than the wages of the workers on leave.

While the costs of providing unpaid leave are low, the GAO found that the number of workers protected by such leaves are substantial. The GAO calculated that approximately 1,675,000 workers are likely to be eligible to benefit from unpaid leave under the bill (840,000 workers are likely to benefit from leave for birth or adoption, 225,000 workers from leave to care for a seriously ill child or parent, and 610,000 workers from temporary medical leave.)

Finally, the GAO acknowleges that its estimate probably overstates the costs of the bill. The GAO assumed that all workers who

are eligible to take leave will take the full 10 weeks of family leave permitted. The GAO's own survey found that 84 percent of the women who took family and medical leave incident to childbirth or adoption returned within 10 weeks. The GAO also did not take into consideration the key employee exemption for the top 10% of salaried employees. Nor did the GAO reduce its cost estimate for existing employer family and medical leave policies or state mandates. The GAO cost estimate confirmed that this legislation benefits a significant number of workers with little cost to employers.

Another factor not considered by the GAO which further reduces the minimal cost of the bill is the benefit to employers of retaining a loyal and experienced workforce. Providing leave increases the likelihood that employees will remain with an employer and the retention of a loyal workforce has been shown to result in productivity gains as well as savings on costs for recruiting, hiring, and training replacement workers.

The minimal short term costs to employers of the bill will be more than offset in long term benefits to employees, employers and families. It is a sound investment.

The bill will not result in a tradeoff of benefits

Because the cost to employers of the FMLA is so low the evidence suggests that its implementation will not result in a reduction or trade off of other benefits. Benefits today average about 30 percent of total compensation. For example, an employee earning $20,000 a year in salary, typically is receiving benefits valued at more than $8,000. The GAO has estimated that the average cost to an employer of providing coverage of the bill is no more than $4.50 per employee. This is less than one tenth of one percent of the average benefit costs attributable to a low wage earning employee. It is substantially less than one-tenth of 1 percent of the average benefit costs of an average wage earner. Requiring the availability of a benefit with such a low relative and absolute cost does not create an incentive to reduce other benefits.

Experience has born out the fact that requiring family and medical leave does not lead to reduction of other benefits. In states with family and medical leave laws there is no evidence of benefit tradeoffs. Likewise there is no evidence that employers who have implemented such policies reduce other benefits. Those who claim there would be benefit tradeoffs have failed to produce a single instance where such a trade off has occurred. On the other hand several witnesses testified that when parental and medical leave was included in collective bargaining agreements or when such leaves were required by state law, no reduction in other benefits occurred.

GAO's 1989 cost estimate of the Family and Medical Leave Act states:

> Family and medical leave benefits are likely to have little, if any, measurable impact on either the labor-management bargaining process or the final outcome of such negotiations. While removing any component of employee compensation from negotiations, by definition limits the range of bargaining and could be expected to have some effect, the magnitude of impact of legislating relatively a

low cost benefit such as uncompensated family and medical leave, is likely unobservable. Furthermore, in a series of discussions with private and public employers and employee organizations that have negotiated for family and medical leave benefits, neither management nor labor representatives believed that the costs associated with parental leave were large enough to result in trade-offs with other components of the negotiated compensation package.

There is simply no evidence to support the contention that enactment of the bill will result in benefit trade-offs. Rather the available evidence suggests that such trade-offs would not occur.

EXPLANATION OF THE BILL

Introduction

Over the 4 years that the Family and Medical Leave legislation has been pending in the House of Representatives, the legislation has gone throughout a process of substantial modification. The bill has evolved in each Congress through a series of compromises designed to address concerns that have been expressed and to broaden the base of support for the bill. In the 100th Congress, after extensive debate, a compromise was reached with the ranking Subcommittee Republican, Representative Marge Roukema and the then ranking Republican on the Committee, Representative James Jeffords along with Representative William Clay, Pat Schroeder and other members of the Committee. The bill was then substantially modified in the Committee markup, to reflect the compromise. The bill introduced this year was identical to the bill approved by the Committee in the 100th Congress.

During Committee markup this year, there were further modifications of the bill that again arose out of lengthy discussions. These changes included the addition of special provisions concerning the bill's application to elementary and secondary schools and extension of coverage to congressional employees.

As the legislation has evolved, the sponsors have saught to achieve the purposes set forth in section 2(b): (1) to balance the demands of the work place with the needs of the family and in so doing, promote the stability and economic security of the family; (2) to entitle employees to take reasonable family or medical leave for certain critical periods in the life of a family, and (3) to accommodate the legitimate interests of employers.

The Committee has listened to the testimony of many hard-working and dedicated employees who spoke of great economic and personal hardship resulting from inadequate leave provisions. There is testimony poignantly demonstrated the need for legislation to guarantee reasonable job protected leave for serious health conditions, early child-rearing, and care-taking for family members in serious need. A broad coalition of women's, labor, disability, children's rights, civil rights, health care providers, religious and other civic groups have endorsed the legislation.

The Committee has also listened to the testimony, both for and against the legislation, from employer associations as well as individual employers. Several employers testified in favor of the legis-

lation, explaining how leave policies comparable to those in the bill have benefited their companies. Other employers expressed concern about the ability of small employers to accommodate a leave standard and the cost of providing such leave. Most of the changes made in the bill as it has evolved in the past three Congresses respond to the problems that were raised by employers.

Family leave

The bill makes available to employees up to 10 weeks of unpaid "family leave" over a two year period upon the occurrence of certain events critical to the life of a family. An employee may take family leave upon the birth of their child or upon the placement for adoption or foster care of a child with the employee. Family leave is also available when an employee needs to care for their child or parent who has a "serious health condition". These provisions allow employees to take time off from work to care for their children or parents during times of acute family need, secure in the knowledge that they can return to their jobs when the leave period is over. Family leave is available to employees of either sex, preserving the Committee's commitment to sex equality as well as statutory and Constitutional requirements.

The amount of time allowed for family leave, 10 weeks, reflects a compromise. Witnesses who have testified before the Subcommittee have stated that the period immediatedly following childbrith is a critical time in the life of a family. Dr. Brazelton recommended a minimum leave period of four and a half months, explaining that these early months involve crucial stages of development that are "predictable and are necessary for both the baby and for the parent before [there is] a secure attachment." This early period of adjustment provides a crucial opportunity for cementing a family. Such recommendations apply equally to adoption and foster care placements, where attachment, particularly if the child has been shifted among previous caretakers, is more difficult to achieve. In addition, parents require a sufficient period of time to make safe and adequate day care arrangements for their new child, often a challenging task given the inadequacy of existing day care options.

The original bill contained an eighteen week leave period. This was changed to a ten week leave period during Committee markup in the 100th Congress and remains in the bill today. The family leave period was reduced to 10 weeks in response to concens raised by employers about accommodating the 18 week minimum of the original bill. Employers maintained that it was significantly easier to adjust work schedules or find temporary replacements over the shorter time period. While not ideal from the employees' perspective, a 10 week minimum represents a middle ground between the family needs of workers and an employer's business needs. Employers are, of course, free to and are encouraged to provide longer leaves.

The availability of 10 weeks to care for a son, daughter or parent with a serious health condition is also essential to the health of families. For example, a child or parent incapable of self-care who must undergo major surgery may require care while preparing for, undergoing or recovering from the surgery. A family member with a terminal illness desperately needs not only the physical care but

also the emotional support that only loved ones can provide. Moreover, employees caring for the terminally ill child or parent have their own compelling emotional need to provide care, comfort and support in this most trying of circumstances.

Temporary medical leave

The bill provides for up to 15 weeks over a 12-month period of unpaid leave for workers temporarily unable to perform the functions of their positions due to serious health conditions. Leave would be available for the period of time an employee is "unable to perform the functions" of his or her position because of either the underlying health condition or the need to secure medical treatment or supervision for that condition.

The purpose of this provision is to help provide reasonable job security to workers faced with serious health problems, including pregnancy and childbirth. The loss of a job at the onset of a serious health condition substantially increases the physical, emotional and financial strains on the worker and the family which is economically dependent upon the worker's income. Moreover, a worker who has lost a job due to a serious health condition often faces future discrimination in finding a job which has even more devastating consequences for the worker and his or her family.

Those families most severely affected by the lack of a temporary medical leave are single-earner families with dependent children, whether a family with one wage earner and one homemaker, or a single-parent family. In such families, the loss of the wage earner's job at a time of high medical bills and emotional trauma can push the family into bankruptcy, homelessness, or the welfare, unemployment or social security income systems. The single-parent family whose sole wage earner loses his or her job faces truly dire circumstances due to the lack of a second potential income to fall back on. The medical problems, loss of job and wages, and the care of dependent children must be faced alone. Dual-earner families are also frequently dependent on both incomes, and the loss of one earner's job due to a serious health condition can have consequences as disastrous as those affecting the single-earner family.

The temporary medical leave requirement is intended to provide basic, humane protection to the family unit when it is most in need of help. It will also help reduce the societal cost born by government and private charity. Individuals or families with a member who is jobless because of a serious health condition are likely candidates for public assistance or private charitable relief. Holding a job open for a reasonable period of time significantly improves the chances of recovery for an individual or family. Not only does such a recovery restore the family, but it also results in significant cost savings in social services.

Exemption of small business

H.R. 770 will initialy cover only those employers with a total of 50 or more employees. The bill requires that a Commission be established which must report to Congress within 2 years about the effect of family and medical leave on small employers. After three years, the bill would cover employers with 35 or more employees. Thus, Congress would have time to act on the report if appropriate

prior to the lowering of the exemption. The use of a phase-in period has been applied in similar legislation, including title VII of the Civil Rights Act of 1964 and the Age Discrimination Act of 1967.

The exemption of employers with less than 50 employee means that 95 percent of all employers are excluded from the coverage of the bill and 44 percent of all employees are exempted. An exemption of employers with less than 35 employees excludes 92 percent of all employers. (The GAO estimates that given the other coverage qualifications in the bill, such as the 1 year of service requirement and the key employee exemption, with the fifty employee exemption, the bill would cover approximately 40 percent of the workforce.) While concerned about the low coverage figures, the Committee, in recognition of the particular problems faced by small employers, approved a compromise which exempts the small employer while providing coverage for workers employed by medium and large sized companies.

The Committee is confident that the bill would establish a norm which most uncovered employers would try to match in order to attract and retain good employees.

Other employer accommodations

Several other changes have been made in the bill since its original introduction in response to concerns raised by employers. An employee is eligible for leave only after having worked for at least 1,000 hours and having been on the job for 12 months. Thus, the bill does not cover part time or seasonal employees working less than 1,000 hours a year. This is the same part time employee exclusion contained in the Employee Retirement Income Security Act of 1974 [ERISA] which regulates the coverage and participation of workers in employer sponsored pension plans.

An employer is also able to exempt key employees from coverage of the bill if the employer can demonstrate a business necessity to do so. A key employee is an employee who receives a salary in the top ten percent of the employer's workforce or is one of the five highest paid employees. The test for business necessity is whether granting a key employee leave would cause grievous economic harm. The provision was added in response to the concern that sometimes a particular employee is of such vital importance that his or her absence would have a demonstrable and serious adverse economic impact on a business.

For purposes of determining the size of an employer, there is a geographic limitation of a 75-mile radius that applies to the aggregation of employees at different facilities. This provision recognizes the difficulties that an employer might have in reassigning workers to geographically separate facilities. In addition, if two spouses work for the same employer they must share the family leave of one employee except when the leave is to care for a seriously ill child. In the case of leave for a serious medical condition, an employee may require recertification of the illness. The damages an employer faces when there has been a violation of the act may be reduced if the employer acted in good faith.

The bill requires that an employee notify an employer of his or her intent to take a leave when the necessity for either family or medical leave is foreseeable. In addition, when the necessity for

leave is foreseeable, based on planned medical treatment or supervision, the employee is required to make a reasonable effort to schedule the treatment or supervision so as not to unduly disrupt the operations of the employer.

The bill includes extensive medical certification provisions. In addition to the requirement that an employee provide certification of a serious health condition, the bill also entitles an employer, at its own expense, to require that an employee obtain the opinion of a second health care provider regarding the serious health condition. During Committee markup this year an amendment was added to the certification provisions concerning the resolution of conflicting opinions. In any case in which the first and second opinions differ, an employer may require an employee to obtain the opinion of a third health care provider which is jointly approved by the employer and employee. The opinion of the third health care provider is binding.

It is the Committee's belief that the bill properly accommodates the legitimate concerns of the business community while providing America's employees basic leave and job security rights when facing a period of great concern to their family. The bill sets a uniform minimum standard for family and medical leave that is a carefully balanced and crucial accommodation of work and family. The Committee believes that such a standard is in the interest of employees, employers and families.

Special provisions for public elementary and secondary schools

While the bill from the start has enjoyed the support of a broad range of teachers associations and parents groups, the National School Boards Association had expressed serious operational concerns about how the bill would apply in the context of an elementary or secondary school. As a result of careful consideration and discussion a new Section 112 was added to the bill in Committee markup. Section 112 contains "Special Rules Concerning Employees of Local Educational Agencies".

As was clearly stated during the markup by its authors and proponents, this new section of the Act is based on the unique educational mission of our public elementary and secondary schools. Congressman Clay stated that the amendment is "premised on the belief that schools are a special institution that require special attention. The amendments recognize the need to balance the educational needs of our children with the family leave needs of teachers." Mrs. Roukema added, "In both cases our children are getting the special attention they deserve".

Section 112 provides that in certain circumstances teachers returning from leave under the Act within the last three weeks of a school term could be required to extend their leave until the end of the semester. This affords teachers the needed leave without interrupting the educational process at a key point in the year. When a teacher needs to be repeatedly away from work because of recurrent medical treatments for a serious medical condition, the school may require that the teacher choose between taking off a block of time or being temporarily transferred to a position that better accomodates the repeated leave. Section 112 (b) clarifies that a local education agency does not violate the Education of the Handi-

capped Act, Section 504 of the Rehabilitation Act, or title VI of the Civil Rights Act solely as a result of granting leave under the FMLA.

The Committee believes that Section 112 strikes a fair balance between the unique needs of our children and the important family needs of their teachers. With the addition of this amendment, virtually all the associations and organizations that represent the interests of our public schools feel comfortable with this legislation.

Coverage of congressional employees

During Committee markup an amendment extending coverage of the bill to congressional employees was offered by Chairman Hawkins and unanimously adopted by the Committee.

The Committee believes that employees of the House of Representatives should be afforded the same employment protections as employees in the private sector and consistent therewith included employees of the House of Represenatives under the substantive provisions of H.R. 770. Legislative Branch employees' family and medical needs and responsibilites are no less than any other employees'.

It is the Committee's intent that all the substantive provisions of H.R. 770 be applicable to those in an "employment postion" with respect to the House of Representative but that the enforcement of such rights be within the sole jurisdiction of the Office of Fair Employment Practices as originally set forth in House Resolution 558. Mindful of the constitutional limits imposed on any enforcement scheme, the Committee believes that this enforcement procedure recognizes both these unique constitutional limits and the needs of these employees. The process, from counseling and mediation to the remedies section, provides a fair and balanced dispute resolution format.

Committee Views

Family leave

The bill provides for up to ten weeks of family leave over a two year period incident to the birth or placement for adoption or foster care of a child. Family leave may also be taken in order to care for a child, a dependent son or daughter over the age of eighteen or a parent who has a serious health condition.

The phrase "in order to care for", in section 103(a)(1)(C), is intended to be read broadly to include both physical and psychological care. Parents provide far greater psychological comfort and reassurance to a seriously ill child than others not so closely tied to the child. In some cases there is no one else other than the child's parents who could care for him or her. The same is often true for adult children caring for a seriously ill parent. Employees are thus assured the right to a period of leave to attend to their child's or parent's basic needs, both during periods of inpatient care and during periods of home care, when such child or parent has a serious health condition.

A father, as well as a mother, can take family leave because of the birth or serious health condition of his child; a son as well as a daughter is eligible for leave to care for a parent. Such leave can

generally be taken at the same time, on an overlapping basis, or sequentially, as long as it is taken "because of" one of the circumstances specified in section 103(a). In the case of a newborn child it permits a mother to take leave under section 103 after having taken childbirth related medical leave under section 104. Under section 103 it is possible for a father to take a family leave during his wife's childbirth and recovery, whether the wife is a homemaker or an employee on temporary medical leave. More generally, it permits families to choose which parent will attend to extraordinary family responsibilities in light of the family's preferences, needs, career concerns, and economic considerations.

In the case of a placement for adoption or foster care, under section 103(a)(1)(B), leave may be taken upon the actual arrival of a child or may begin prior to arrival if an absence from work is required for such a placement to proceed.

Language was added in Committee markup this year to clarify that leave under section 103(a)(1) (A) and (B) may not be taken intermittently unless the employer and the employee agree otherwise. In contrast, section 103(a)(3) specifically provides that leave under section 103(a)(1)(C) may be taken intermittently when medically necessary.

The terms "son or daughter" and "parent" in section 103 must be read in light of the definitions of those terms in sections 101(11) and 101(12) of the bill. Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children and who therefore find themselves in need of workplace accommodation for their child-care responsibilities are the child's adoptive, step, or foster parents, or their guardians, or sometimes simply their grandparent or other relative or adult. This legislation deals with such families by tying the availability of "parental" leave to the birth, adoption, or serious health condition of a "son or daughter," and then defining the term "son or daughter" to mean "a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis . . ." Sec. 101(11). In choosing this definitional language, the Committee intends that the terms "son or daughter" and "parent" be broadly construed to ensure that the employees who actually have the day-to-day responsibility for caring for a "son or daughter" or who have a biological or legal relationship to that "son or daughter" are entitled to leave.

An employee is also eligible for family leave to care for a son or daughter over 18 years of age if he or she has a serious health condition and is "incapable of self-care because of a mental or physical disability." Sec. 101(11)(B). The bill recognizes that in special circumstances, where a child has a mental or physical disability, a child's need for parental care does not end when he or she reaches 18 years of age. In such circumstances, parents continue to have an active role in caring for their sons or daughters over eighteen years of age. A dependent adult son or daughter who has a serious health condition and who is incapable of self-care because of a mental or physical disability presents the same compelling need for parental care as the child under 18 years of age with a serious health condition. The nature of the son or daughter's serious health condition which would warrant leave under this provision would be similar

to those warranting leave to care for sons and daughters under 18 years of age and parents.

Section 103(a)(1)(C) also provides for a leave to care for an employee's parent who has a serious health condition. Under this provision, an employee could take leave to care for a parent of any age who, because of a serious mental or physical condition, is unable to care for his or her own basic hygienic or nutritional needs or safety. Examples include a parent whose daily living activities are impaired by such conditions as advanced Alzheimer's disease, stroke, severe clinical depression or who is recovering from major surgery or in the final stages of a terminal illness.

Family leave may be taken on a reduced leave basis if agreed to by the employee and employer as set forth in section 103(b). Any reduced leave schedule agreed to shall not result in a reduction in the total amount of leave to which an employee is entitled. A "reduced leave schedule" is defined as "leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday." Sec. 101(8).

The availability of reduced leave is crucial if the purposes of family leave are to be carried out in some instances. The leave provided by this bill is unpaid. It is thus, as a practical matter, unavailable to those families who simply cannot afford such a leave. If the choice is between full-time leave and no leave at all, these families, whose number is likely to be substantial, will be denied the important benefits of the leave. Reduced leave permits these families to experience some of the benefits of the bill while maintaining economic self-sufficiency. We anticipate that reduced leave will often be perceived as desirable by employers who would often prefer to retain a trained and experienced employee part-time for the weeks that the employee is on leave rather than hire a full-time temporary replacement.

Family leave under section 103 shares a number of statutory terms, definitions and ancillary provisions with temporary medical leave under section 104. Most centrally, section 103 grants family leave to an employee for the care of a child or parent who has a "serious health condition," a term defined for purposes of both section 103 and 104 in section 101(10). Moreover, both sections 103 and 104 provide that leave taken in connection with a serious health condition may be taken "intermittently when medically necessary.'" Sections 103(a)(3); 104(a)(2). Both provisions require, where the need for leave is foreseeable, that the employee provide the employer with prior notice "in a manner which is reasonable and practicable," 103(e)(1), (2)(B), 104(d)(2); and that health treatment and supervision be scheduled so as not to disrupt unduly the operations of the employer. Sections 103(e)(2)(A), 104(d)(1).

Finally, the certification requirement of section 105 applies not only to temporary medical leave under section 104, but also to family leave for serious health conditions under section 103(a)(1)(C). In each of these instances of common language or common provisions, the policies, concerns and interpretations discussed in connection with the temporary medical leave requirement apply to family leave as well.

Section 103(d)(1) and (2), governing situations where an employer has a policy of paid family leave and providing for the substitution

of paid leaves of various kinds for the unpaid leave mandated by this legislation, also has its parallel in section 104(c). Both provisions clarify that where an employer has a paid family or temporary medical leave policy, the remainder of the statutory period (up to 10 workweeks for family leave, up to 15 workweeks for medical leave) may be unpaid. The provisions on substitution of other types of paid leave diverge with respect to the type of paid leave that may be substituted. While both permit the substitution of paid personal leave and family leave while the temporary medical leave provision allows substitution of paid sick leave or medical (temporary disability) leave, in cases where these apply to the condition in question. As stated in section 104(c)(2) nothing in the Act requires an employer to provide paid sick leave or medical leave in any situation in which the employer does not normally provide such leave. In both the case of family and medical leave, what is contemplated is that analogous leaves which are paid may be substituted for the bill's unpaid leave in order to mitigate the financial impact of wage loss due to family and temporary medical leaves. Of course, the employer may not trade shorter periods of paid leave specified in subpart 2) of sections 103(d) and 104(c) for the longer periods prescribed by the Act; read together, subsections (1) and (2) of 103(d) and 104(c) mean that an employee is entitled to the benefits of the shorter paid leave, plus any remaining leave time made available by the Act, on an unpaid basis.

Finally, section 103(f), provides a limitation on the right to take family leave when both spouses are employed by the same employer. Under section 102(f), if both parents are employed by the same employer, the total amount of leave that the parents may together take is limited to 10 weeks, except when such leave is needed to care for a seriously ill child. This provision is intended to prevent any employer from being penalized for or discouraged from employing married couples.

Medical leave

Unpaid temporary medical leave is provided only for workers with a "serious health condition." The definition of that term in section 101(10) is broad and intended to cover various types of physical and mental conditions.

With respect to an employee, the term "serious health condition" is intended to cover conditions or illnesses that affect an employee's health to the extent that he or she must be absent from work on a recurring basis or for more than a few days for treatment or recovery. Analogously, with rspect to a child or parent, the term "serious health condition" is intended to cover conditions or illnesses that affect the health of the child or parent such that he or she is similarly unable to participate in school or in his or her regular daily activities.

The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within even the most modest sick leave policies. Conditions or medical procedures that would not normally be covered by the legislation include minor illnesses which last only a few days and surgical procedures which typically do not involve hospitalization and require only a

brief recovery period. Complications arising out of such procedures that develop into "serious health conditions" will be covered by the Act. It is intended that in any case where there is doubt whether coverage is provided by this Act, the general tests set forth in this paragraph shall be determinative. Of course, nothing in the Act is intended or may be construed to modify or affect any law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status, as section 401 clarifies.

Examples of serious health conditions include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, such as severe morning sickness, the need for prenatal care, childbirth and recovery from childbirth. All of these conditions meet the general test that either the underlying health condition or the treatment for it requires that the employee be absent from work on a recurring basis or for more than a few days for treatment or recovery. They also involve either inpatient care or continuing treatment or supervision by a health care provider, and frequently involve both. For example, someone who suffers a heart attack generally requires both inpatient care at a hospital and ongoing medical supervision after being released from the hospital; the patient must also be absent from work for more than a few days. Someone who has suffered a serious industrial accident may require initial lengthy treatment in a hospital and periodic physical therapy under medical supervision thereafter. A cancer patient may need to have periodic chemotherapy or radiation treatments, and a patient with severe arthritis may require periodic treatment such as physical therapy. A pregnant patient is generally under continuing medical supervision before childbirth, may require several days off for severe morning sickness or other complications, receives inpatient care for childbirth and several days thereafter, and is under medical supervision requiring additional time off during the recovery period from childbirth. The legislative history of the Pregnancy Discrimination Act established that the medical recovery period for a normal childbirth is 4 to 8 weeks, with a longer period where surgery or other complications develop.

All of these health conditions require recurring absences of more than a few days away from work either for the condition or operation itself or for continuing medical treatment or supervision (e.g, physical therapy for accident victims or severe arthritis patients). Because continuing treatment or supervision may sometimes take the form of intermittent visits to the doctor, section 104(a)(2) of the bill specifically permits an employee to take the leave "intermittently when medically necessary." Only the time actually taken is charged against the employee's entitlement.

Section 104(d) of the bill accommodates employer needs in "any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision", by requiring the employee to make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the employer's op-

erations (subject to the approval of the employee's doctor or other health care provider) and in addition, to give the employer prior notice of the treatment or supervision in a manner which is reasonable and practicable. By "reasonable and practicable", the Committee intends for the employee to give notice in a timely manner and in sufficient time for an employer to make suitable arrangements for the employee's leave so as to avoid undue disruption to the employer.

This subsection (104(d)) clarifies that the section 104(a) requirement concerning the employee's inability to perform his or her job functions due to a serious health condition contemplates inability caused by the underlying condition or by the need to receive medical treatment or supervision for it. Someone requiring treatment or supervision that can be scheduled to accommodate the employer's convenience obviously may not have a condition which at the time of making the scheduling decision prevents the employee from performing the functions of the job (i.e., someone who need a hernia operation or prenatal care or has early cancer). However, such an employee does not need medical treatment or supervision and must at some point be absent from work to receive it, and hence is, at the time or receiving treatment or supervision, "unable to perform the functions of such employee's position." A narrower construction of the operative language of section 104, under which leave would be available only when the employee literally was so physically or mentally incapacitated that he or she could not work, would deny protection for leaves for treatment or supervision essential to avoid that very incapacity or facilitate recovery from it, a construction that is contrary to common sense and would seriously undermine the purposes of the bill.

Another provision designed to accommodate employer needs is found in section 105, concerning certification of the serious health condition. This provision is designed as a check against employee abuse of the temporary medical leave. Thus, the employer may require the employee to provide certification by the employee's own health care provider who, under section 101(7), can be a person licensed to provide health care services or someone determined by the Secretary of Labor to be capable of providing such services. The Secretary of Labor shall issue regulations determining those persons capable of providing health care services.

The required content of the certification parallels those already in general use by insurers and is to include the date on which the condition began, its probable duration, and the medical facts concerning the condition. In cases of medical leave, the certification must also state that the employee is unable to perform the functions of his or her position. In cases of family leave to care for a seriously ill child or parent, the certification shall also contain an estimate of the amount of time the employee is needed to care for the child or parent. In addition, if the employee's serious health condition prevents him or her from performing his or her job functions, section 106(d) clarifies that the employer and employee are free to agree to an alternative job which the employee is able to perform despite the condition. In this instance, the employer is also free under section 105(c) to request (but not require) the employee to provide additional certification concerning the "extent to which

the employee is unable to perform the functions of the employee's position". Section 106(d) specifies, however, that performance in the alternate job, if agreed to, does not constitute use of the temporary leave. Under section 105(d), if the employer has reason to question the original certification, the employer may, at its own expense, require a second certification from a different health care provider chosen by the employer. Such a health care provider may not be employed by the employer on a regular basis.

An amendment was added in Committee markup this year to provide for the resolution of conflicts between first and second medical opinions. Under section 105(e) an employer may, at its own expense, require a third opinion from a provider jointly designated or approved by the employer and the employee. The third opinion will be considered final and binding. Under section 105(f), the employer may require reasonable periodic recertifications. The certification shall, when possible, be provided in advance or at the commencement of the leave. If the need for leave does not allow for this, such certification should be provided reasonably soon after the commencement of the leave.

Under section 104(b), temporary medical leave may be unpaid, except to the extent that an employer already provides a paid temporary medical leave benefit. But section 104(c)(1) permits an employer who provides paid temporary medical leave for a period of fewer than 15 work weeks a year, to provide the additional weeks of leave needed to attain the full 15 week leave on an unpaid basis. Section 104(c)(2) also permits either the employee or the employer to elect to substitute any of the employee's accrued paid vacation leave, sick leave, or medical leave for any part of the 15-week period, except that the employer is not required by this Act to provide paid sick leave or medical leave in any situation in which the employer does not normally provide such leave.

Employment and benefits protection

An employee taking either family or medical leave under this bill is "entitled, upon return from such leave," to restoration to his or her previous position or an "equivalent position with equivalent benefits, pay, and other terms and conditions of employment." Section 106. This provision is central to the entitlement provided in this bill. The right to restoration extends until the expiration of the leave provided for in the Act. If an employer permits a leave to extend beyond the required period under the Act, the right of restoration provided under this Act does not extend during such additional period.

The Committee recognizes that it will not always be possible for an employer to restore an employee to the precise position held before taking leave. On the other hand, employees would be greatly deterred from taking leave without the assurance that upon return from leave, they will be reinstated to a genuinely equivalent position. Accordingly, the bill contains an appropriately stringent standard for assigning employees returning from leave to jobs other than the precise positions which they previously held. First, the standard of "equivalence"—not merely "comparability" or "similarity"—necessarily requires a correspondence to the terms and conditions of an employee's previous position. Second, the

standard encompasses all "terms and conditions" of employment, not just those specified. This standard for evaluating job equivalence under section 106(a)(1)(B) parallels title VII's standard for evaluating job discrimination in 42 U.S.C. sec. 2000e-2(a)(1), which prohibits "discrminat[ion] with respect to [an employee's] compensation, terms, conditions, or privileges of employment." For purposes of job equivalence, the Committee intends that the statutory language contained in section 106(a)(1)(B) of this Act shall be interpreted as broadly as similar language in section 703(a)(1) of title VII.

Section 106(a)(2) makes explicit that an employer may not deprive an employee who takes leave of benefits accrued before the date on which the leave commenced. Nothing in the bill, however, should be construed to entitle an employee to the accrual of any seniority or benefits during any period of leave, nor does this section entitle the restored employee to any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken leave. Section 106(a)(3)(A)(B). This means that, for example, if but for being on leave, an employee would have been laid off, the employee's entitlement to be rehired is whatever it would have been had the employee not been on leave.

Under section 106(a)(4), the employer may have a formal company policy which requires all employees to obtain medical certification from the employee's health care provider that the employee is able to resume work. In Committee markup this year a provision was added to clarify that "nothing in this paragraph shall supersede a valid State or local law, or a collective bargaining agreement that governs the return to work of employees taking medical leave". The amendment was added to clarify that section 106(a)(4) was not meant to supercede other valid state or local laws that for reasons of public health might affect the medical certification required for an employee who had been on medical leave to return to work. For example, section 106(a)(4) does not supercede a state law that requires specific medical certification before employees who have direct contact with the public are able to return to work after having had a particular illness. The term "valid state or local law" makes it explicit that such state or local laws must not be inconsistent with any federal law such as the Pregnancy Discrimination Act, the Rehabilitation Act and other provisions of the Family and Medical Leave Act. Section 106(a)(4) is in no way to be construed as allowing states to undermine the rights established under these or any other federal law. Nor does this provision affect section 401 which permits states to enact laws that provide "greater employee family or medical leave rights than the rights established under this Act."

Section 106(b) contains a limited exemption from the requirements of section 103 and 104 for certain highly compensated employees. An employee is to be considered highly compensated if such salaried employee is among the highest paid 10 percent of employees or one of the 5 highest paid employees of the employees employed by the employer within 75 miles of the facility at which the employee is employed. For such employees, restoration may be denied if (A) such denial is necessary to prevent substantial and

grievous economic injury to the employer's operations, (B) the employer notifies the employee of its intent to deny restoration on such basis at the time the employer determines that such injury would occur, and (C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice. In measuring grievous economic harm, a factor to be considered is the cost of losing a key employee if the leave is not granted. A key employee who takes leave is still eligible for continuation of health benefits although such employee may not be eligible for reinstatement.

Section 106(c) requires an employer to maintain health insurance benefits during periods of family and medical leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date of job restoration. The employer must maintain such coverage under any group health plan, as defined in section 162(i)(3) of the Internal Revenue Code of 1954. Nothing in this section requires an employer to provide health benefits if it does not already do so at the time the employee commences leave. Section 106(c) is strictly a maintenance of benefits provision. It should be noted, however, that if an employer establishes a health benefits plan during an employee's leave, section 106(c) should be read to mean that the entitlement to health benefits would commence at the same point during the leave that the employee would have become entitled to such benefits if still on the job. Leave taken under this Act does not constitute a qualifying event (as defined in section 603(2) of the Employee Retirement Income Security Act of 1974) under the continuation of health benefit provisions contained in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272). However, a qualified event may occur when it becomes known that an employee is not returning to employment and therefore ceases to qualify for health benefits under this Act.

Section 106(d) permits an employer and an employee to mutually agreed to alternative employment provided that such agreement does not reduce the employee's period of entitlement to unpaid medical leave under the Act. Nothing in this section shall preclude an employer who provides paid medical leave from offering alternative employment on conditions other than required by this section to an employee on paid leave. However, if an employee refuses such an offer of alternative employment, the employee retains the right to unpaid leave.

In regard to section 112 which was added in Committee this year, section 112(b) is intended to clarify the relationship of the FMLA to certain other Federal statutes. The subsection clarifies that simply granting leave under the Act does not in and of itself violate the statutes listed in this section. However, the granting of leave does not relieve an LEA from its obligations under such acts.

The phrase "an employee employed principally in an instructional capacity" under section 112 (c) and (d) is intended to include teachers or other instructional employees whose principal function is directly providing educational services. This would include special education assistants, such as signers, whose presence in the classroom is necessary to the educational process. It would not in-

clude teacher assistants, cafeteria workers, building service workers, bus drivers, and other primarily non-instructional employees.

Whenever a teacher is required to extend his or her leave under section 112 (c) or (d), such leave would be treated as other leave under the Act, with the same rights to employment and benefits protected contained in section 106.

Reasonable grounds under subsection of (f) of section 112 could include such factors as advise of counsel, collective bargaining agreements, as well as compliance with valid state and local laws, the laws referenced in subsection (b) and regulations or policies promulgated by the Department of Labor.

Maintenance of health benefits under multiemployer plans

Section 106(c) of the bill requires an employer to maintain coverage for the employee under any group health plan for the limited duration of the employee's family or temporary medical leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored or, if earlier, the date on which his or her employment would have terminated. In the case of an employer that contributes to a multiemployer health plan (i.e., a health plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements), this requirement means that the employer by which the employee is employed when he or she takes the leave must continue contributing to the plan on behalf of the employee for the duration of the leave, as if the employee had continued in employment throughout the period of leave, unless the plan expressly provides for some other method of maintaining coverage for a period of family or temporary medical leave. The employee's benefit rights shall continue to be governed by the terms of the plan.

An employer may be obligated to contribute to a multiemployer health plan on behalf of its employees pursuant to a collective bargaining or other agreement, the terms of a plan, or a duty imposed by labor-management relations law. In any event, the Committee's intent is that where the method of providing group health plan coverage is through contributions to a multiemployer plan, the employer, unless the plan expressly provides otherwise, shall be obligated to continue contributing as if the employee were not on leave, notwithstanding any terms of any collective bargaining or other agreement to the contrary, and the employee shall look to the plan for his or her benefit rights.

The Committee recognizes that multiemployer plans need to receive contributions to finance benefit coverge. To ensure that a plan receives employer contributions, the obligation to contribute imposed by the bill, like other statutory obligations imposed by current law, shall be considered an obligation enforceable under 29 U.S.C. sec. 1145 (relating to delinquent contributions to a multiemployer plan). This is not intended to preclude any other means of enforcement that the plan may provide or be entitled to pursue, but to vest a plan with an absolute right to invoke section 1145.

During the period of leave, the employer shall make contributions to the plan at the same rate and in the same amount as if the

employee were continuously employed. Unless the contrary is clearly demonstrated by the employer (or by the plan, where appropriate), it shall be assumed that the employee would have continued working on the same schedule, at the same wage or salary, and otherwise under the same terms and conditions as he or she normally worked before going on leave. So, for example, if the employee normally worked 160 hours a month before taking family or temporary medical leave and the employer is obligated to contribute to a multiemployer health plan at the rate of $1.25 an hour, the employer would be obligated to continue contributing to the plan on behalf of the employee during the leave period at the rate of $1.25 an hour for 160 hours a month, unless the employer clearly shows that the employee would have worked fewer hours, or the plan clearly shows that employee would have worked more hours, had he or she not been on leave.

A plan may adopt more specific rules governing an employer's contribution obligation during the leave period. For example, a plan may adopt a rule that an employee's normal number of work hours a month is the average number of work hours a month over the month (or a period of months) immediately prior to the employee's leave period. A plan could adopt rules which accommodate its particular reporting period (e.g., monthly, weekly). Also the Committee intends that an employer shall provide the plan with whatever information is appropriate to assist the plan in determining an employee's status and whether the employer has an obligation to contribute on behalf of the employee.

The bill does not give an employee on family or temporary medical leave any greater rights or benefits under a multiemployer plan than an employee who is not on such leave. The same conditions of coverage shall apply to an employee on such leave as apply to an employee who is not on such leave from the employer. This includes any obligations and conditions with respect to employee contributions.

And, of course, these obligations apply only with respect to an "eligible employee" within the meaning of section 101(3) of the bill; that is, an employee who has met the length of employment standard. Neither the employer nor the multiemployer plan has any obligation under the bill with respect to persons who are not "eligible employees."

Prohibited acts

The Committee recognizes the possibility that an employer, in certain circumstances, may seek to induce an employee not to take the entitled leave or to retaliate against an employee for taking leave. The bill makes clear that an employer's interference with or attempts to restrain or deny the exercise of or the attempt to exercise any right provided by this Act is unlawful. This prohibition includes, but is not limited to, threats of reprisal or discrimination against any individual for opposing any practice made unlawful by this Act.

It is also unlawful for an employer to discharge or in any other manner discriminate against an employee because such employee has filed a charge, has instituted a proceeding under or related to the bill, has given or is about to give information in connection

with any inquiry or proceeding relating to a right provided under this bill or has testified or is about to testify in any inquiry or processing relating to a right provided under this bill.

Administrative provisions and civil remedies

The temporary medical and family leave provisions are time specific in two important respects: first, by the duration of the leave once granted, and second, if not granted in a timely manner the right is effectively lost. Cognizant of the time specific nature of the rights created, the bill contains an enforcement scheme designed to provide the most readily available and timely enforcement system possible. It is, therefore, the clear intent of the Committee that all time requirements set forth in the bill be expeditiously met, and that every effort be made to act expeditiously in resolving these cases.

The basic components of the Act's enforcement mechanisms are administrative investigation and hearings containing strict deadlines, alternative judicial enforcement, and the requirement of significant remedies for noncompliance. The availability of an administrative scheme means that aggrieved employees will have access to an already existing Department of Labor structure mandated to investigate and prosecute their claims. At the same time, the imposition of strict time deadlines for action will avoid many of the problems of delay and inaction that often plague administrative enforcement. It is the Committee's intent that all civil remedies apply to state employees as well, including the right to sue their employers.

Just as important is the relief provided. Providing for the award of attorney's fees to prevailing parties will ensure both that attorneys will be willing to represent employees to assert their rights under the Act and that employers will be deterred from violating the provisions of the law. Similarly, the provision of mandatory money damages serves the dual purposes of (1) ensuring that employees will be recompensed for their actual losses and the pain and suffering in being denied leave and thus having to initiate legal action in order to assert their rights and (2) adding to employers' incentives to comply. Actual losses include any actual expenses resulting from a denial of medical benefits in violation of the provisions of this Act. It is the Committee's intent that the relief authorized in this section be available against state employers to the full extent that is Constitutionally permissible.

An individual who believes he or she has been denied any of the rights guaranteed by the Act (including but not limited to restoration to the same or equivalent position following a temporary family or medical leave, or maintenance of health insurance benefits during the leave), or who has reason to believe that he or she will be denied any such rights, may file a charge with an office of the Department of Labor of may bring a civil action to enforce the provisions of this Act. An administrative charge must be filed within one year of the violation. Charges may be filed on behalf of a person or a class of individuals. The Secretary of Labor must investigate the charge and make a determination within 60 days; if the determination is that there is a reasonable basis for the charge, the Secretary must issue and prosecute a complaint. An on-the-

record hearing before an administrative law judge ("ALJ") must begin within 60 days of the issuance of the complaint (unless the ALJ has reason to believe that the purposes of the Act would be best furthered by allowing more time to prepare for a hearing). The ALJ's findings, conclusions, and order for relief must be issued within 60 days of the hearings' end. The ALJ's decision becomes the final agency decision unless appealed and modified by the Secretary; the final agency decision may be reviewed in a federal court of appeals. If no such review is sought, the Secretary may petition the appropriate Federal district court for enforcement of the final agency order.

If the Secretary has dismissed or failed to take action on a charge within 60 days after filing, the individual who filed the charge may elect to file an action directly in federal or state court, instead of continuing with the administrative enforcement procedure. The individual may also elect to proceed in court if the Secretary, at any point in the administrative procedure, fails to fulfill his or her obligations under the Act.

A charging party may also elect, before the commencement of the hearing, to be a party. This will allow that party to present evidence and testimony and to participate fully in the subsequent proceedings in the case. Such election does not, however, relieve the Secretary of his or her duty to prosecute the complaint.

At any time between the filing of a charge and the issuance of the ALJ's findings and conclusions, the parties may negotiate and agree to a settlement. Before the issuance of a complaint, any such agreement entered into by the charging party and the charged employer is effective, unless the Secretary determines within 30 days after notice of the settlement, that such is not generally consistent with the purposes of this title. After the complaint has been issued, it is the Secretary's duty to prosecute the complaint and consequently any settlement agreement will be negotiated between the Secretary and the party charged. Such agreement may not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a full remedy for the charging party.

Commission on family and medical leave

Title III of this Act establishes a bipartisan commission, to be known as the Commission on Family and Medical Leave, to conduct a comprehensive study of existing and proposed family and medical leave policies and the potential costs, benefits, and impact on productivity of such policies on businesses, especially businesses which employ fewer than 50 employees. The Commission will be composed of 12 voting members and 2 ex-officio members. The majority and minority leadership of the House of Representatives and the Senate shall each appoint one member of Congress to the Commission and two additional Commission members selected by virtue of their expertise in family, medical and labor-management issues, including small business representatives. The Secretary of Health and Human Resources and the Secretary of Labor shall serve as nonvoting ex-officio members.

It will be the task of the Commission to explore the relevant family and medical leave issues and options and to make recom-

mendations to Congress within two years of its first meeting. The two year study period is timed so as to provide Congress with an additional year to consider the report of the Commission prior to the change in the small employer exemption to coverage of employers with 35 or more employees.

Miscellaneous

Title IV of the Act contains miscellaneous provisions concerning the effect of this legislation on other legislation and on existing employment benefits, encouraging more generous leave policies, regulations, and effective dates. Section 401(a) generally provides that nothing in the Act shall be construed to modify or affect in any way any Federal or state law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age or handicapped status. Thus, for example, nothing in this legislation may be read to affect or amend Title VII of the 1964 Civil Rights Act, 42 U.S.C. Sec. 2000e *et seq.*, as amended by Public Law 95-555, 92 Stat. 2076 (1978).

The bill is also not intended to modify or to affect the Rehabilitation Act of 1973, as amended, or the regulations concerning employment which have been promulgated pursuant to that statute. Thus, the leave provisions of this bill are wholly distinct from the reasonable accommodation obligations of employers who receive Federal financial assistance, who contract with the Federal government, or of the Federal government itself. Employees with disabilities who meet essential job requirements may request such accommodations as job restructuring or the modification of equipment under the 1973 Act. *See, e.g.*, 45 C.F.R. Sec. 84.11 *et seq.* The purpose of the Act is simply to apply the leave provisions of the bill to all employees and employers within its coverage, and not to modify already existing rights and protections.

Section 401(b) deals with state and local laws, and makes clear that state and local laws providing greater leave rights than those provided herein (assuming state and local compliance with all other Federal laws) may continue to exist. Thus, for example, if a state were to guarantee a longer period of family leave to all employees or to make it a paid leave, nothing in the Act could be read to supersede the state law.

Similarly, section 402(a) specifies that employers must continue to comply with collective bargaining agreements or employment benefit plans providing greater benefits than the Act. Conversely, section 402(b) makes clear that rights under the Act cannot be taken away by collective bargaining or employer plans.

Finally, section 404 provides that the Secretary of Labor may prescribe the necessary regulations for family and temporary medical leave, and section 405 sets forth the Act's effective dates. Generally, with two exceptions, the Act goes into effect six months after the date of enactment. However, the Title creating the Commission goes into effect immediately; and where there is a collective bargaining agreement in effect on the date of enactment, Title I (providing the unpaid family and temporary medical leave) goes into effect on either the date the agreement terminates, or one year after the date of enactment, whichever occurs earlier.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI, the Committee estimates that this bill will have no significant inflationary impact on prices and costs in the operation of the national economy.

Committee Findings

With reference to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee's extensive legislative and oversight findings since the 98th Congress are described in the Committee Action and Background and Need for Legislation sections of this report. No oversight findings have been presented to the Committee by the Committee on Government Operations. The Education and Labor's own findings are incorporated throughout the discussion above, "Explanation of the Bill".

Statement Regarding Oversight Reports From the Committee on Government Operation

In compliance with clause 2(l)(3)(D) of the rule XI of the Rules of the House of Representatives, no findings or recommendations of the Committee on Government Operations were submitted to the Committee with reference to the subject matter specifically addressed by this legislation.

Congressional Budget Office Estimate

In compliance with clause 2(l)(3)(C) and rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, submitted prior to the filing of this report, is set forth as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 10, 1989.

Hon. Augustus F. Hawkins,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: In response to your request, the Congressional Budget Office has reviewed H.R. 770, the Family and Medical Leave Act of 1989, as ordered reported by the House Committee on Education and Labor on March 8, 1989.

Estimated cost to the Federal Government: The estimated costs of Titles I, II, and III of the bill are discussed below. Title IV contains miscellaneous provisions that have no budgetary impact and effective dates for all Titles.

Title I: Title I of H.R. 770 would allow a private sector employee, and any employee not covered under Title II, up to ten weeks' leave without pay during any 24-month period, because of the birth of a son or daughter. The placement of a child for adoption or foster care with the employee would also entitle the employee to this leave. In addition, an employee could claim this leave to care for a seriously ill son or daughter. Title I would also permit the employee up to 15 workweeks of temporary medical leave in every

12-month period due to a serious health condition preventing the employee from performing the functions of his or her position. Title I would not apply to any employer of less than 50 workers for the first three years after enactment, or to any employer of less than 35 workers thereafter.

The direct costs of providing this leave would be borne entirely by the private employer, and therefore would not result in costs being incurred by the federal government. However, enactment of this bill would entail additional administrative costs for the Department of Labor (DOL). Costs would vary with the number of claims filed under H.R. 770. CBO assumes this Act would be administered directly through the DOL Wage and Hour Division.

The Wage and Hour Division works to obtain compliance with the minimum wage, overtime, child labor, and other employment standards, and we assume could administer this Act as well. This Division handles compliance actions for approximately one million people per year, as well as fulfilling its other administrative duties. Costs for this division are about $90 million annually. No data are available as to the estimated number of claims that would be filed under the Family and Medical Leave Act. Costs would vary not only with the caseload, but also with the manner in which the Department of Labor assures compliance with these provisions.

Title II: Title II of H.R. 770 would allow federal civil service employees up to 18 weeks of leave without pay during any 24-month period, because of the birth of a son or daughter. The placement of a child for adoption or foster care with the employee would also entitle the employee to this leave. In addition, an employee could claim this leave to care for a seriously ill son or daughter. Title II would also permit an employee up to 26 workweeks of temporary medical leave in every 12-month period due to a serious health condition preventing the employee from functioning in his or her job.

Under current law, there is no comprehensive federal policy covering unpaid leave for parental and medical purposes. The Office of Personnel Management provides guidelines for granting leave for various purposes, but implementation of leave policy is up to the discretion of each employee's supervisor.

We estimate that enactment of Title II of H.R. 770 would not significantly increase federal costs. The leave allowed under Title II is unpaid leave, and the employee would be responsible for the employee's share of any benefits they wished to keep current. Although some temporary workers would likely be hired to maintain operations, we assume that their salary would be at or below that of the permanent worker. Also, federal guidelines do not require that benefits be provided to temporary workers. Additional costs could result from providing benefits to the temporary worker, or from increased recruiting and personnel administration.

Title III: Title III of this bill would establish the Commission on Family and Medical Leave to study existing and proposed policies on such leave, and the potential costs, benefits, and impact on productivity of such policies on employers. Travel expenses, per diem allowances, and salary and overhead costs for an executive director and staff are also authorized, although no specific authorization level is stated in the bill. We estimate these costs could be about $300,000 per year over the two-year life of the Commission. Costs of

Title III most likely would begin late in fiscal year 1989 or in 1990, depending on the date of enactment.

Titles I, II, and IV of the bill would take effect six months after the date of enactment, while Title III would become effective upon enactment.

Estimated cost to State and local governments. There is no data available for estimating the cost of H.R. 770 to state and local governments. They would be responsible for any costs associated with providing their employees with the leave specified in Title I. These cost could vary with the frequency and duration of leave taken, and with the type and number of replacement personnel needed. However, by the end of 1988 five states had enacted their own parental or family leave laws, and at least 14 states have similar legislation pending. Therefore, in these states, H.R. 770 may have less of an effect on state and local government costs than in those states with no similar legislation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Pogue (226-2820).

Sincerely,

ROBERT D. REISCHAUER,
Director.

COMMITTEE ESTIMATE

With reference to the statement required by clause 7(a)(1) of rule XIII of the Rules of the House of Representatives, the Committee accepts the estimate prepared by the Congressional Budget Office.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Family and Medical Leave Act of 1989".

(b) TABLE OF CONTENTS.—Section 1. Short title; table of contents.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE

Sec. 101. Definitions.
Sec. 102. Inapplicability.
Sec. 103. Family leave requirements
Sec. 104. Temporary medical leave requirement.
Sec. 105. Certification.
Sec. 106. Employment and benefits protection.
Sec. 107. Prohibited acts.
Sec. 108. Administrative enforcement.
Sec. 109. Enforcement by civil action.
Sec. 110. Investigative authority.
Sec. 111. Relief.
Sec. 112. Special rules concerning employees of local educational agencies.
Sec. 113. Notice.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Parental and temporary medical leave.

TITLE III—COMMISSION ON FAMILY AND MEDICAL LEAVE

Sec. 301. Estabishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.

Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Encouragement of more generous leave policies.
Sec. 404. Regulations.
Sec. 405. Effective dates.

TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

Sec. 501. Family and temporary medical leave for certain congressional employees.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important to the development of the child and to the family unit that fathers and mothers be able to participate in early childrearing and the care of their family members who have serious health conditions;

(3) the lack of employment opportunities to accommodate working parents can force individuals to choose between job security and parenting;

(4) There is inadequate job security for some employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of women's and men's roles in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects their working lives more than it affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.—The Congress therefore declares that the purposes of this Act are—

(1) to balance the demands of the workplace with the needs of families, to promote stability and economic security in families, and to promote Federal interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child or parent who has a serious health condition;

(3) to accomplish such purposes in a manner which accommodates the legitimate interests of employers;

(4) to accomplish such purposes in a manner which, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND MEDICAL LEAVE

SEC. 101. DEFINITIONS.

For purposes of this title the following terms have the following meanings:

(1) The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 (29 U.S.C. 141 et seq.).

(2) The terms "employ", "person", and "State" have the meanings given such terms in sections 3(g), 3(a), and 3(c), respectively, of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g), 203(a), 203(c)).

(3)(A) The term "eligible employee" means any employee as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)) who has been employed by the employer with respect to whom benefits are sought under this section for at least—

(i) 1,000 hours of service during the previous 12-month period, and

(ii) 12 months.

(B) Such term does not include any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act).

(4) The term "employee" means any individual employed by an employer.

(5)(A) The term "employer" means any person engaged in commerce or any activity affecting commerce who—

(i) during the 3-year period beginning after the effective date of this title, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calender year; or

(ii) after such period, employs 35 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

(B) for purposes of subparagraph (A), the term "person" includes, among other things—

(i) any person who acts, directly or indirectly, in the interest of an employer to any of the employer's employees,

(ii) any successor in interest of an employer; and

(iii) any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(C) For purposes of subparagraph (A), a public agency shall be deemed to be a person engaged in commerce or in an activity affecting commerce.

(6) The term "employment benefits" means all benefits provided or made available to employees by an employer, and include group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or through an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(7) The term "health care provider" means—

(A) any person licensed under Federal, State, or local law to provide health care services, or

(B) any other person determined by the Secretary to be capable of providing health care services.

(8) The term "reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday.

(9) The term "Secretary" means the Secretary of Labor.

(10) The term "serious health condition" means an illness, injury, impairment, or physical or mental conditions which involves—

(A) inpatient care in a hospital, hospice, or residential health care facility, or

(B) continuing treatment or continuing supervision by a health care provider.

(11) The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age, or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

(12) The term "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

SEC. 102. INAPPLICABILITY.

The rights provided under this title shall not apply—

(1) during the 3-year period beginning after the effective date of this title, with respect to employees of any facility of an employer at which fewer than 50 employees are employed, and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 50; and

(2) after such period, with respect to employees of any facility of an employer at which fewer than 35 employees are employed, and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 35.

SEC. 103. FAMILY LEAVE REQUIREMENT.

(a) IN GENERAL.—(1) An eligible employee shall be entitled, subject to section 105, to 10 workweeks of family leave during any 24-month period—

(A) because of the birth of a son or daughter of the employee,

(B) because of the placement of a son or daughter with the employee for adoption or foster care, or

(C) in order to care for the employee's son, daughter, or parent who has a serious health condition.

(2) The entitlement to leave under paragraphs (1)(A) and (1)(B) shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) In the case of a son, daughter, or parent, who has a serious health condition, such leave may be taken intermittently when medically necessary, subject to subsection (e). Leave under either such paragraph may not be taken intermittently unless the employer and employee agree otherwise.

(b) REDUCED LEAVE.—Upon agreement between the employer and the employee, leave under this section may be taken on a reduced leave schedule, however, such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled.

(c) UNPAID LEAVE PERMITTED.—Leave under this section may consist of unpaid leave, except as provided in subsection (d).

(d) RELATIONSHIP TO PAID LEAVE.—(1) If an employer provides paid family leave for fewer than 10 workweeks, the additional weeks of leave added to attain the 10-workweek total may be unpaid.

(2) An eligible employee or employer may elect to substitue any of the employee's paid vacation leave, personal leave, or family leave for any part of the 10-week period.

(e) FORESEEABLE LEAVE.—(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the eligible employee shall provide the employer with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, or parent, and

(B) shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

(f) SPOUSES EMPLOYED BY THE SAME EMPLOYER.—In any case in which a husband and wife entitled to family leave under this section are employed by the same employer, the aggregate number of workweeks of family leave to which both may be entitled may be limited to 10 workweeks during any 24-month period, if such leave is taken—

(1) under subparagraph (A) or (B) subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) IN GENERAL.—(1) Any eligible employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position, shall be entitled, subject to section 105, to temporary medical leave. Such entitlement shall continue for as long as the employee is unable to perform such functions, except that it shall not exceed 15 workweeks during any 12-month period.

(2) Such leave may be taken intermittently when medically necessary, subject to subsection (d).

(b) UNPAID LEAVE PERMITTED.—Such leave may consist of unpaid leave, except as provided in subsection (c).

(c) RELATIONSHIP TO PAID LEAVE.—(1) If an employer provides paid temporary medical leave or paid sick leave for fewer than 15 weeks, the additional weeks of leave added to attain the 15-week total may be unpaid.

(2) An eligible employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or medical leave for any part of the 15-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) FORESEEABLE LEAVE.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(2) shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

SEC. 105. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a claim for family leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by the health care provider of the eligible employee or of the employee's son, daughter, or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) SUFFICIENT CERTIFICATION.—Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced,

(2) the probable duration of the condition,

(3) the appropriate medical facts within the provider's knowledge regarding the condition, and

(4)(A) for purpose of leave under section 104, a statement that the employee is unable to perform the functions of the employee's position; and

(B) for purposes of leave under section 103(a)(1)(C), an estimate of the amount of time that the eligible employee is needed to care for the son, daughter, or parent.

(c) EXPLANATION OF INABILITY TO PERFORM JOB FUNCTIONS.—The employer may request that, for purposes of section 106(d), certification under this section that is issued in any case involving leave under section 104 include an explanation of the extent to which the eligible employee is unable to perform the functions of the employee's position.

(d) SECOND OPINION.—(1) In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a), the employer may require, at its own expense, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b).

(2) Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employer.

(e) RESOLUTION OF CONFLICTING OPINIONS.—(1) In any case in which the second opinion described in subsection (d) differs from the original certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(f) SUBSEQUENT RECERTIFICATION.—The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

SEC. 106. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.—(1) Any eligible employee who takes leave under section 103 or 104 for its intended purpose shall be entitled, upon return from such leave—

(A) to be restored by the employer to the postion of employment held by the employee when the leave commenced, or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this title shall not result in the loss of any employment benefit earned before the date on which the leave commenced.

(3) Except as provided in subsection (b), nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave, or

(B) any right, benefit, or position or employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) As a condition to restoration under paragraph (1), the employer may have a policy that requires each employee to receive certification from the employee's health care provider that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law, or a collective bargaining agreement that governs the return to work of employees taking medical leave.

(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES.—(1)— An employer may deny restoration under this subsection to any eligible employee described in paragraph (2) if—

(A) such denial is necessary to prevent substantial and grievous economic injury to the employer's operations,

(B) the employer notifies the employee of its intent to deny restoration on such basis at the time the employer determines that such injury would occur, and

(C) in any case in which the leave has commenced, that employee elects not to return to employment after receiving such notice.

(2) An eligible employee described in this paragraph is a salaried eligible employee who is among the—

(A) highest paid 10 percent of employees, or

(B) 5 highest paid employees,

whichever is greater, of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) MAINTENANCE OF HEALTH BENEFITS.—During any period an eligible employee takes leave under section 103 or 104, the employer shall maintain coverage under any group health plan (as defined in section 162(i)(2) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

(d) NO BAR TO AGREEMENT CONCERNING ALTERNATIVE EMPLOYMENT.—Nothing in this title shall be construed to prohibit an employer and an eligible employee from mutually agreeing to alternative employment for the employee throughout the period during which the employee would be entitled to leave under this title. Any such period of alternative employment shall not cause a reduction in the period of temporary medical leave to which the employee is entitled under section 104.

SEC. 107. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title,

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title, or

(3) has testified, or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 108. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall issue such rules and regulations as are necessary to carry out this section, including rules and regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) CHARGES.—(1) Any person (or person, including a class or organization, on behalf of any person) alleging an act which violates any provision of this title may file a charge respecting such violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) Not more than 10 days after the Secretary receives notice of the charge, the Secretary—

(A) shall serve a notice of the charge on the person charged with the violation, and

(B) shall inform such person and the charging party as to the rights and procedures provided under this title.

(3) A charge may not be filed more than 1 year after the date of the last event constituting the alleged violation.

(4) The charging party and the person charged with the violation may enter into a settlement agreement concerning the violation alleged in the charge before any determination is reached by the Secretary under subsection (c). Such an agreement shall be effective unless the Secretary determines, within 30 days after notice of the proposed agreement, that the agreement is not generally consistent with the purposes of this title.

(c) INVESTIGATION; COMPLAINT.—(1) Within the 60-day period after the Secretary receives any charge, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(3) If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(4) Upon the issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint. Any such settlement shall not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a full remedy for the charging party.

(5) If, at the end of the 60-day period referred to in paragraph (1), the Secretary—

(A) has not made a determination under paragraph (2) or (3),

(B) has dismissed the charge under paragraph (2), or

(C) has disapproved a settlement agreement under subsection (b)(4) or has not entered into a settlement agreement under paragraph (4) of this subsection,

the charging party may elect to bring a civil action under section 109. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

(6) The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 110.

(7) The Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice of the petition to be served upon the respondent, and the court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as it deems just and proper.

(d) RIGHTS OF PARTIES.—(1) In any case in which a complaint is issued under subsection (c), the Secretary shall, not more than 10 days after the date on which the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging such violation. Such election must be made before the commencement of the hearing.

(3) The failure of the Secretary to comply in a timely manner with any obligation assigned to the Secretary under this title shall entitle the charging party to elect, at the time of such failure, to bring a civil action under section 109.

(e) CONDUCT OF HEARING.—(1) The Secretary shall have the duty to prosecute any complaint issued under subsection (b).

(2) An administrative law judge shall conduct a hearing on the record with respect to any complaint issued under this title. The hearing shall be commenced within 60 days after the issuance of such complaint, unless the judge, in the judge's discretion, determines that the purposes of this Act would best be furthered by commencement of the action after the expiration of such period.

(f) FINDINGS AND CONCLUSIONS.—(1) After the hearing conducted under this section, the administration law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 111.

The administrative law judge shall inform the parties, in writing, of the reason for any delay in making such findings and conclusions if such findings and conclusions are not made within 60 days after the conclusion of such hearing.

(g) FINALITY OF DECISION; REVIEW.—(1) The decision and order of the Administrative law judge shall become the final decision and order of the agency unless, upon appeal by an aggrieved party taken not more than 30 days after such action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision and the order of the agency.

(2) Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—(1) If an order of the agency is not appealed under subsection (g)(2), the Secretary may petition the United States district court for the district in which the violation is alleged to have

occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the Secretary, by filing in such court a written petition praying that such order be enforced.

(2) Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the Secretary. In such a proceeding, the order of the Secretary shall not be subject to review.

(3) If, upon appeal of an order under subsection (g)(2), the United States court of appeals does not reserve such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

SEC. 109. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.—(1) Subject to the limitations in this section, an eligible employee or any person, including a class or organization on behalf of any eligible employee or the Secretary may bring a civil action against any employer (including any State employer) to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 108(b).

(3) No civil action may be commenced under paragraph (1) if the Secretary—

(A) has approved a settlement agreement or has failed to disapprove a settlement agreement under section 108(b)(4), in which case no civil action may be filed under this subsection if such action is based upon a violation alleged in the charge and resolved by the agreement, or

(B) has issued a complaint under section 108(c)(3) or 108(c)(6), in which case no civil action may be filed under this subsection if such action is based upon a violation alleged in the complaint.

(4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date of the last event constituting the alleged violation.

(B) In any case in which—

(i) a timely charge is filed under section 108(b), and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 108(c)(4)) occurs more than 11 months after the date on which any alleged violation occurred,

the charging party may commence a civil action not more than 60 days after the date of such failure.

(6) The Secretary may not bring a civil action against any agency of the United States.

(7) Upon the filing of the complaint with the court, the jurisdiction of the court shall be exclusive.

(b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code, or

(2) in the judicial district in the State in which—

(A) the employment records relevant to such violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.—A copy of the complaint in any action by an eligible employee under subsection (a) shall be served upon the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) ATTORNEYS FOR THE SECRETARY.—In any civil action under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 110. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—Any employer shall keep and preserve records in accordance with section 11(c) of such Act and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary may not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 108.

(d) SUBPOENA POWERS, ETC.—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided under section 9 of the Fair Labor Standards Act.

SEC. 111. RELIEF.

(a) INJUNCTIVE.—(1) Upon finding a violation under section 108, the administrative law judge shall issue an order requiring such person to cease and resist from any act or practice which violates this title.

(2) In any civil action brought under section 109, the court may grant as relief against any employer (including any State employer) any permanent or temporary injunction, temporary restraining order, and other equitable relief as the court deems appropriate.

(b) MONETARY.—(1) Any employer (including any State employer) that violates any provision of this title shall be liable to the injured party in an amount equal to—

(A) any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate, and

(B) an additional amount equal to the greater of (i) the amount determined under subparagraph (A), or (ii) consequential damages, not to exceed 3 times the amount determined under such subparagraph.

(2) If an employer who has violated this title proves to the satisfaction of the administrative law judge or the court that the act or omission which violated this title was in good faith and that the employer and reasonable grounds for believing that the act or omission was not a violation of this title, such judge or the court may, in its discretion, reduce the amount of the liability provided for under this subsection to the amount determined under paragraph (1)(A).

(c) ATTORNEYS' FEES.—The prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. The United States shall be liable for costs the same as a private person.

(d) LIMITATION.—Damages awarded under subsection (b) may not accure from a date more than 2 years before the date on which a charge is filed under section 108(b) or a civil action is brought under section 109.

SEC. 112. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.— Except as otherwise provided in this section, the rights, remedies, and procedures under this Act shall apply to any local educational agency (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and its employees, including the rights under section 106, which shall extend throughout the period of any employees's leave under this section.

(b) LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.—A local educational agency shall not be in violation of the Education of the Handicapped Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency exercising such employee's rights under this Act.

(c) INTERMITTENT LEAVE FOR INSTRUCTIONAL EMPLOYEES.—(1) Subject to paragraph (2), in any case in which an employee employed principally in an instructional capacity by any such educational agency seeks to take leave under section 103(a)(1)(C) or 104 which is foreseeable based on planned medical treatment or supervision and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency may require such employee to elect either—

(A) to take leave for periods of a particular duration, not to exceed the planned medical treatment or supervision; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and which—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the employee's regular employment position.

(2) The elections described in subparagraph (A) and (B) of paragraph (1) shall apply only with respect to an employee who complies with section 103(e)(2) or 104(d) (whichever is appropriate).

(d) RULES APPLICABLE TO PERIODS NEAR THE CONCLUSION OF AN ACADEMIC TERM.—The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any employee employed principally in an instructional capacity by any such educational agency:

(1) If the employee begins leave under section 103 or 104 more than 5 weeks before the end of the academic term, the agency may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of a least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) If the employee begins leave under section 103 during the period that commences 5 weeks before the end of the academic term, the agency may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) If the employee begins leave under section 103 during the period that commences 3 weeks before the end of the academic term and the duration of the leave is greater than 5 working days, the agency may require the employee to continue to take leave until the end of such term.

(e) RESTORATION TO EQUIVALENT EMPLOYMENT POSITION.—For purposes of determinations under section 106(a)(1)(B) (relating to an employee's restoration to an equivalent position) in the case of a local educational agency, such determination shall be made on the basis of established school board policies, practices, and collective bargaining agreements.

(f) REDUCTION OF THE AMOUNT OF LIABILITY.—If a local educational agency which has violated title I proves to the satisfaction of the administrative law judge or the court that the agency or department had reasonable grounds for believing that the underlying act or omission was not a violation of such title, such judge or court may, in its discretion, reduce the amount of the liability provided for under section 111(b)(1) to the amount determined under subparagraph (A) of such section.

SEC. 113. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.—Any employer that willfully violates this section shall be assessed a civil money penalty not to exceed $100 for each separate offense.

TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 210. FAMILY AND TEMPORARY MEDICAL LEAVE.

(a) IN GENERAL.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

"§ 6331. Definitions

"For purposes of this subchapter—

"(1) 'employee' means—

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section;

whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition'; means an illness, injury, impairment, or physical or mental condition which involves—

"(A) inpatient care in a hospital, hospice, or residential health care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provided;

"(3) 'child' means an individual who is—

"(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

"(B)(i) under 18 years of age, or

"(ii) 18 years of age or older and incapable of self-care because of mental or physical disability; and

"(4) 'parent' means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

"§ 6332. Family leave

"(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

"(1) because of the birth of a child of the employee;

"(2) because of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for the employee's child or parent who has a serious health condition.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or othewise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d) Notwithstanding any other provision of this section—

"(1) a request for leave under this section based on the birth of a child may not be granted, if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date of such child's birth; and

"(2) a request for leave under this section based on the placement for adoption or foster care of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date on which such child is so placed.

"(e)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

"(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

"(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

"(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6333. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

"(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

"(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6334. Certification

"(a) An employing agency may require that a request for family leave under section 6332(a)(3) or temporary medical leave under section 6333 be supported by certification issued by the health care provider of the employer or of the employee's child or parent, which ever is appropriate. The employee shall provide a copy of such certification to the employing agency.

"(b) Such certification shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probably duration of the condition;

"(3) the medical facts within the provider's knowledge regarding the condition; and

"(4) for purposes of section 6333, a statement that the employee is unable to perform the functions of the employee's position.

§ 6355. Job protection

"An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

"§ 6336. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6337. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

"§ 6338. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1989.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

"6331. Definitions.
"6332. Family leave.
"6333. Temporary medical leave.
"6334. Certification.
"6335. Job protection.
"6336. Prohibition of coercion.
"6337. Health insurance.
"6338. Regulations.".

"(b) EMPLOYEE PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, and subchapter III of chapter 63,".

TITLE III—COMMISSION ON FAMILY AND MEDICAL LEAVE

SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Family and Medical Leave (hereinafter in this Act referred to as the "Commission").

SEC. 302. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of—

(A) existing and proposed policies relating to family leave and temporary medical leave,

(B) the potential costs, benefits, and impact on productivity of such policies on business which employ fewer than 50 employees, and

(C) alternative and equivalent State enforcement of this Act with respect to employees described in section 113; and

(2) within 2 years after the date on which the Commission first meets, submit a report to the Congress, which may include legislative recommendations concerning coverage of business which employ fewer than 50 employees and alternative and equivalent State enforcement of this Act with respect to employees described in section 113.

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of 12 voting members and 2 ex-officio members appointed not more than 60 days after the date of the enactment of this Act as follows:

(1) One Senator shall be appointed by the majority leader of the Senate, and one Senator shall be appointed by the minority leader of the Senate.

(2) One member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the minority leader of the House of Representatives.

(3)(A) Two members each shall be appointed by—

(i) the Speaker of the House of Representatives,

(ii) the majority leader of the Senate,

(iii) the minority leader of the House of Representatives, and

(iv) the minority leader of the Senate.

(B) Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor-management issues and shall include representatives of small business.

(4) The Secretary of Health and Human Services and the Secreary of Labor shall serve on the Commission as nonvoting ex-officio members.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among its members.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not more than 30 days after the date on which members are appointed, and the Commission shall meet thereafter upon the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this Act. Upon the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission from the personnel of any Federal agency to assit the Commission in carrying ot its duties.

(e) USE OF FACILITIES AND SERVICES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(f) PERSONNEL FROM OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to assist the Commission in carrying out its duties.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of its report to the Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.—Nothing in this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.—Nothing in this Act shall be construed to supersede any provision of any State and local law which provides greater employee family or medical leave rights than the rights established under this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall be construed to diminish an employer's obligation to comply with any collective-bargaining agreement or any employment benefit program or plan which provides greater family and medical leave rights to employees than the rights provided under this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies which comply with the requirements under this Act.

SEC. 404. REGULATIONS.

The Secretary shall prescribe such regulations as are necessary to carry out title I of this Act, within 60 days after the date of the enactment of this Act.

SEC. 405. EFFECTIVE DATES.

(a) TITLE III.—Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.—(1) Except as provided in paragraph (2), titles I, II, and IV shall take effect 6 months after the date of the enactment of this Act.

(2) In the case of a collective bargaining agreement in effect on the effective date of paragraph (1), title I shall apply on the earlier of—

(A) the date of the termination of such agreement, or

(B) the date which occurs 12 months after the date of the enactment of this Act.

TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

SEC. 501. FAMILY AND TEMPORARY MEDICAL LEAVE FOR CERTAIN CONGRESSIONAL EMPLOYEES.

(a) IN GENERAL.—The rights and protections under sections 103 through 107 (other than section 106(b)) shall apply to any employee in an employment position and any employing authority of the House of Representatives.

(b) ADMINISTRATION.—In the administration of this section, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.

(c) DEFINITION.—As used in this section, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 3, 1988, as continued in effect by House Resolution 15, One Hundred and First Congress, agreed to January 3, 1989.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1988 (H.R. 925, AS AMENDED)

Section 1. Short title; table of contents

Designates this Act as the Family and Medical Leave Act of 1988 and sets out the table of contents.

Section 2. Findings and purposes

States Congress' findings that the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly; it is important for fathers and mothers to be able to participate in early childrearing and the care of their children with serious health conditions; the lack of employment policies to accommodate working parents forces many individuals to choose between job security and parenting; and there is inadequate job security for employees who have serious health conditions that prevent them from working temporarily.

The purposes of this Act are to balance the demands of the workplace and the needs of families; to entitle employees to take reasonable leave, for family or medical reasons; and to accommodate the legitimate interests of employers.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY AND MEDICAL LEAVE

Section 101. Definitions

This section defines certain terms for purposes of the Act. Those definitions specifically referenced to the Fair Labor Standards Act are to be interpreted similarly under this Act. Such terms include:

Eligible employee—means any employee as defined in section 3(e) of the Fair Labor Standards Act (FLSA) who is employed for not less than 12 months and not less than 1000 hours over the previous 12 month period, except that such term does not include Federal officers or employees covered under Title II of this Act.

Employer—means any person engaged in commerce who employs 50 or more employees for the first 3 years after the effective date of this title and 35 or more employees thereafter, who is engaged in commerce; any successor in interest of an employer; and any public agency defined under section 3(x) of the FLSA.

Serious health condition—means an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or supervision by a health care provider.

Section 102. Inapplicability

This title does not apply to the employees of any facility of an employer at which there are less than 50 employees, for the first three years after the effective date of this title, and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 50. After such period, this title does not apply to the employees of any facility of an employer at which there are less than 35 employees and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 35.

Section 103. Family leave requirement

Entitles an employee to 10 weeks of family leave during any 24 month period upon the birth, placement for adoption or foster care, or serious health condition of an employee's son or daughter or

parent. The entitlement to leave upon the birth or placement of a child expires at the end of the 12 month period after such birth or placement. Such leave may be taken on a reduced leave schedule upon agreement between the employer and the employee.

Family leave may be unpaid. Either the employee or employer may elect to substitute any accrued paid vacation leave, personal leave, or paid family leave for any part of the 10 week period and such may be reduced from the 10 weeks of unpaid leave. When the need for leave is foreseeable based on an expected birth or adoption, the employee shall provide the employer with reasonable prior notice. When the need for leave is foreseeable based on planned medical treatment or supervision, the employee shall provide the employer with reasonable prior notice and make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider of the employee's child or parent.

In any case in which a husband and wife entitled to family leave are employed by the same employer, the aggregate period of family leave may be limited to 10 weeks, except in the case of a seriously ill child.

Section 104. Temporary medical leave requirement

Entitles any employee, who because of a serious health condition, becomes unable to perform the functions of his or her position to temporary medical leave not to exceed 15 weeks during any 12 month period.

Medical leave may be unpaid. If the employer provides paid temporary medical leave or sick leave, such may be subtracted from the 15 weeks and either the employee or employer may elect to substitute accrued paid vacation leave, sick leave or medical leave for any part of the 15 week period. When the need for leave is foreseeable based on planned medical treatment or supervision, the employee shall provide the employer with reasonable prior notice and make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations, subject to the approval of the employee's health care provider.

Section 105. Certification

An employer may require that a claim for leave be supported by medical certification. Such certification shall state: (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, and (3) the appropriate medical facts within the provider's knowledge regarding the condition. For purposes of medical leave, such certification shall also state that the employee is unable to perform the functions of his or her position. For purposes of family leave to care for a seriously ill child or parent, such certification shall include an estimate of the amount of time that the employee is needed to care for the child or parent. The employer may require, at its own expense, that the employee obtain a second opinion and that the employee submit periodic medical recertifications. Should the first and second opinions differ, the employer may require, at its own expense, the opinion of a third jointly approved health care provide, whose opinion shall be binding.

Section 106. Employment and benefits protection

Entitles any employee upon the return from leave for its intended purpose to be restored to the position held when the leave commenced or to an equivalent position.

The taking of leave shall not result in the loss of any employment benefits earned before the commencement of leave. Except that nothing in this section shall entitle any employee to any right or benefit to which the employee would not have been entitled had the employee not taken leave.

An employer may deny restoration to any salaried employee among the highest 10 percent of employees or the 5 highest paid employees, whichever is greater, if such denial is necessary to prevent substantial and grievous economic injury to the employer. The employer must notify the employee of its intent to deny restoration and if leave has commenced, permit the employee to elect to return to employment.

The employee's pre-existing health benefits shall be maintained during any leave.

Section 107. Prohibited acts

Makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under this title.

Section 108. Administrative enforcement

Authorizes the Secretary of Labor to issue such rules and regulations as are necessary to carry out this section.

Any person alleging an act in violation of this title may file a charge with the Secretary. A charge must be filed within 1 year after the last event constituting the alleged violation.

After the charge is received, the Secretary has 60 days to investigate the charge and either issue a complaint or dismiss the charge. The Secretary and the respondent may enter into a settlement agreement concerning a complaint, except that such shall generally not be entered into over the objection of the charging party.

If at the end of the 60 day period, the Secretary has not issued a complaint, dismissed the charge, or entered into or disapproved a settlement agreement, the charging party may bring a civil action as provided under this title. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

An administrative law judge shall commence a hearing on the record within 60 days of the issuance of the complaint. The decision and order of the administrative law judge shall become the final decision and order of the agency unless such is appealed by an aggrieved party within 30 days or the Secretary modifies or vacates the decision, in which case the decision of the Secretary is the final decision.

Any person aggrieved by a final order may obtain review in the United States court of appeals within 60 days after entry of such final order.

Section 109. Enforcement by civil action

Either an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate United States or state court of competent jurisdiction. A civil action may not be commenced if the Secretary has approved a settlement agreement or issued a complaint.

No civil action may be commenced more than 1 year after the date of the last event constituting the alleged violation.

Section 110. Investigative authority

Provides the Secretary with investigative authority as empowered under section 11(a) of the FLSA.

Section 111. Relief

An employer found in violation of this title is liable to the injured party for any wages, salary, employment benefits, or other compensation denied to such employee, with interest, and an additional amount equal to the greater of either (1) the above amount or (2) consequential damages, not to exceed 3 times the amount determined above.

The court may in its discretion reduce the amount of liability of any employer found to have violated this title upon proof that the employer acted in the reasonable and good faith belief that it was not in violation of this title.

The prevailing party, other than the United States, may be awarded reasonable attorney's fees.

Section 112. Special rules concerning employees of local educational agencies

A public elementary or secondary school will not be considered in violation of any existing laws solely because leave was provided.

If a public elementary or secondary school teacher seeks to take intermittent medical leave which is foreseeable based on planned medical treatment and if such leave will result in the teacher's absence from the classroom over 20% of the time, the teacher may be required to either (a) take continuous leave for the entire treatment period or (b) be placed in an equivalent position that would not be as disruptive to the classroom.

A public elementary or secondary school teacher may be required to extend leave through the end of a semester if a teacher would otherwise have returned with the last 2–3 weeks of the semester's end, depending on the date on which the leave commenced and the duration of the leave.

For purposes of certain enforcement actions, determinations shall be made on the basis of established school board policies.

Section 113. Notice

Each employer shall post a notice setting forth the pertinent provisions of this title. Any employer who wilfully violates this section is liable up to $100 for each offense.

TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Extends coverage of the Act to federal government employees. (This title is within the jurisdiction of the Post Office and Civil Service Committee.)

TITLE III—COMMISSION ON FAMILY AND MEDICAL LEAVE

Section 301. Establishment

Establishes the Commission on Family and Medical Leave.

Section 302. Duties

The Commission shall conduct a comprehensive study of existing and proposed policies relating to family and medical leave and the costs, benefits, and impact on productivity of such policies on employers with fewer than 50 employees. The Commission shall submit a report to the Congress within 2 years, which may include legislative recommendations concerning the coverage of employers with fewer than 50 employees.

Section 303. Membership

The Commission shall be composed of 12 voting members and 2 ex-officio members appointed as follows—1 senator, appointed by the majority leader of the Senate, 1 senator appointed by the minority leader of the Senate; 1 member of the House of Representatives appointed by the Speaker of the House of Representatives, 1 member of the House of Representatives appointed by the minority leader of the House of Representatives; and 8 additional members, 2 appointed by each of the above. Such members shall be appointed by virtue of demonstrated expertise in family, disability and labor-management issues and shall include representatives of small business. The Secretary of Health and Human Services and the Secretary of Labor shall serve as nonvoting ex-officio members.

Section 304. Compensation

The Members of the Commission shall be unpaid.

Section 305. Powers

The Commission shall meet within 30 days of appointment and shall hold such hearings as appropriate. The Commission may obtain from any federal agency information necessary to enable it to carry out this Act. The Commission may request use of the facilities, services, or personnel of any Federal agency to assist in carrying out its duties.

Section 306. Termination

The Commission shall terminate 30 days after the date of the submission of its final report to the Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

Section 401. Effect on other laws

Nothing in this Act shall be construed to affect any federal or state law prohibiting discrimination or any state law which provides greater family or medical leave rights.

Section 402. Effect on existing employment benefits

Nothing in this Act shall diminish an employer's obligation under a collective bargaining agreement or employment benefit plan to provide greater leave rights nor may the rights provided under this title be diminished by such an agreement or plan.

Section 403. Encouragement of more generous leave policies

Nothing in this Act shall be construed to discourage employers from adopting leave policies more generous than required under this Act.

Section 404. Regulations

The Secretary shall prescribe such regulations as are necessary to carry out this Act.

Section 405. Effective dates

This Act shall generally take effect 6 months after the date of enactment. In the case of a collective bargaining agreement, in effect on the date of enactment, the Act shall take effect upon the termination of the agreement, but no later than 12 months after enactment. The Commission on Family and Medical Leave shall take effect on the date of enactment.

Section 501. Coverage of congressional employees

The rights and protections provided under sections 106 through 107 (other than section 106(b)) shall apply to employees of the House of Representatives. Enforcement of this provision shall be in accordance with the House adopted Fair Employment Practices Resolution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART I—THE AGENCIES GENERALLY

* * * * * * *

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

* * * * * * *

§ 2105. Employee

(a) * * *

* * * * * * *

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter [53] *53, and subchapter III of chapter 63,* of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title, and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

(2) subchapter I of chapter 81, chapter 84, and section 7902 of this title.

This subsection does not affect the status of these nonappropriated funds activities as Federal instrumentalities.

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CHAPTER 63—LEAVE

* * * * * * *

SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

6331. Definitions.
6332. Family leave.
6333. Temporary medical leave.
6334. Certification.
6335. Job protection.
6336. Prohibition of coercion.
6337. Health insurance.
6338. Regulations.

SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

§ 6331. Definitions

For purposes of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

(B) an individual under clause (v) or (ix) of such section; whose employment is other than an temporary or intermittent basis;

(2) "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential health care facility; or

(B) continuing treatment, or continuing supervision, by a health care provider;

(3) "child" means an individual who is—

(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

(B)(i) under 18 years of age, or

(ii) 18 years of age and older and incapable of self-care because of mental or physical disability; and

(4) "parents" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

§ 6332. Family leave

(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

(1) because of the birth of a child of the employee;

(2) because of the placement for adoption or foster care of a child with the employee; or

(3) in order to care for the employee's child or parent who has a serious health condition.

(b) Leave under this section—

(1) shall be leave without pay;

(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

(d) Notwithstanding any other provision of this section—

(1) a request for leave under this section based on the birth of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date of such child's birth; and

(2) a request for leave under this section based on the placement for adoption or foster care of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date on which such child is so placed.

(e)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such

expected birth or adoption in a manner which is reasonable and practicable.

(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6333. Temporary medical leave

(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

(b) Leave under this section—

(1) shall be leave without pay;

(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6334. Certification

(a) An employing agency may require that a request for family leave under section 6332(a)(3) or temporary medical leave under section 6333 be supported by certification issued by the health care provider of the employee or of the employee's child or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

(b) Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the medical facts within the provider's knowledge regarding the condition; and

(4) for purposes of section 6333, a statement that the employee is unable to perform the functions of the employee's position.

§ 6335. Job protection

An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

§ 6336. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 6337. Health insurance

An employee enrolled in a health benefit plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

§ 6338. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1989.

* * * * * * *

MINORITY VIEWS ON H.R. 770

The legislation subject to this report, stated simply, constitutes misguided public policy. It attempts to address perceived societal problems arising from changing workforce demographics with a sledgehammer, flawed approach which will ultimately be counterproductive to the interests of both employers and employees.

H.R. 770 is not a bipartisan effort. Twelve of the thirteen Republican members of the Education and Labor Committee voted against H.R. 770, and the Administration opposes the bill. Secretary of Labor Elizabeth Dole has stated that she will advise the President to veto the bill and any mandated leave legislation.

I

Need for the legislation

H.R. 770 is a legislative initiative in search of a problem to solve. Proponents of the bill claim that American employers are not adjusting to the increasing numbers of women in today's workforce and believe, therefore, that Congress must impose a federal mandate that requires employers to provide unpaid leave. We disagree. Employers are offering new, customized benefit packages to their employees in ever greater numbers to meet their family, disability, and other needs. A 1987 study by the Bureau of Labor Statistics (BLS) of well over a million establishments (including small employers) demonstrated that approximately 63 percent of those surveyed had some type of flexible work schedule/child care policy for their employees. A 1988 BLS benefit plan survey of over 30 million employees at medium and large firms found that approximately 90 percent were covered by disability leave [1] with some level of income replacement and that one-third were covered by formal benefit plans providing maternity leave to care for a newborn child; such leave was narrowly defined and considered separately from other leave benefits, such as sick leave or vacation leave, which might also be used for this purpose. Similarly, a 1988 survey of over 1500 companies of all sizes by the American Society for Personnel Administration (ASPA) found that 89 percent provided disability leave (68 percent, paid). A 1987 study by the National Council of Jewish Women's Center for the Child, conducted in 100 communities across the country and including responses from over 2,000 employers of all sizes, found that 72 percent of women at firms with 20 or more employees and 51 percent of women at firms with less than 20 employees receive a minimum of 8 weeks of job-protected medical leave for pregnancy. Forty percent provided an additional period of family leave to women.

[1] Of course, under the Pregnancy Discrimination Act, such policies must cover disability due to pregnancy, child birth, and related medical conditions.

These recent surveys mark a trend towards the voluntary provision of greater benefits in the areas of family and medical leave. A 1986 survey of almost 400 large companies conducted by Catalyst, a New York research and advisory organization, found that about 35 percent have increased the length of paid maternity leave in the past five years. Most of these firms have progressive policies which now offer a paid maternity leave package of up to three months. The Catalyst survey also revealed that 95 percent of those companies grant short-term disability leave (38.9 percent, fully paid; 57.3 percent, partially paid; 3.8 percent, unpaid), that 90.2 percent continue full benefits, and that 80.6 percent guarantee the same or a comparable job. Another study by the Conference Board, a business research group in New York, showed that 2,300 companies now offer some form of maternity leave—a fourfold increase since 1982. Finally, it should be noted, as the General Accounting Office (GAO) stated on February 7, 1989, in its testimony before the Subcommittee on Labor-Management Relations, that many employers without formal policies no doubt already, nevertheless, accommodate employees on an *ad hoc* basis.

This trend will likely continue. According to the U.S. Department of Labor's 1987 "Workforce 2000" study, over 60 percent of new entrants into the labor force will be women. Only one in seven (15 percent) will be native white males. Simultaneously, the lower birthrate of the 1970's is resulting in a shrinking labor pool. Employers, therefore, will face intense competition to recruit and retain workers, most of whom will be women. Simple principles of supply and demand—without government involvement—will require employers to develop benefit/leave packages responsive to the needs of these workers.

Proponents of H.R. 770 often cite similar policies in other industrialized nations as a rationale for imposing mandated family and parental leave policies on the American economy. What they fail to recognize, however, are the basic philosophical and cultural differences which set America apart from any other nation on earth. For example, they often cite the fact that Japan provides 12 weeks of partially paid maternity leave to Japanese women in the workforce. An article which appeared in The Washington Post on February 8, 1988, by Margaret Shapiro, entitled "In Japan, the Son Still Rises—Women's Main Role Remains Housewife" sharply delineates our cultural differences:

> In a country where wives are often addressed by their husbands as oi ("hey you") or gusai ("dumb wife"), and the term "women's widom" means shallow thinking, career-minded women are a rarity.
>
> Women make up about 40 percent of Japan's workforce. But those who venture outside the house usually are given the lowest paid, least significant work, often wearing office uniforms with aprons to run errands and pour tea for bosses and male colleagues. On average, they earn half of what men do.
>
> While most women begin working upon graduation, more than two-thirds quit when they get married and

> most of the rest resign when they are pregnant, citing a combination of personal desire and social pressure.
>
> "I was directly told what a shameful thing it is to continue working when I was pregnant, that it doesn't look good to be working," said Ichiko Ishihara, the only woman ever to become a top department store executive here.

Sweden is also often cited as an example of responsibile government intervention in the area of family leave. But Sweden's labor market "is sex segregated to an exceptional degree," and women are "rarely found in management positions," according to a 1989 study by the Women's Research and Education Institute.

Other differences are equally as stark. For example, it has been estimated that three quarters of industrialized nations pay their manufacturing workers less than what a comparable worker earns in the United States. Should Congress, therefore, require that wages be lowered in this country? Obviously not. The point is only that analogies from foreign countries with different cultures and economies have little persuasive value as to what policies are proper for this country.

Finally, it might be asked whether we wish to draw upon the practices of European countries which have demonstrated job growth far behind that of the United States. While cause-and-effect relationships are always difficult to draw precisely, it is worth noting, according to a study by the National Federation of Independent Business, that:

> Those nations with the lowest proportion of benefits to wages—Australia, U.S.A., and Japan—also have the highest levels of employment growth;
>
> These same nations exhibit lower levels of unemployment and duration of unemployment;
>
> Moreover, in looking at female labor participation rates, it would appear that increasing fringe benefits (as a percentage of wages) has no effect; and
>
> American companies have been boosting their productivity by adding more capital and more labor, but European companies have been utilizing capital instead of labor. Labor market rigidities, wage and benefit mandates are resulting in excessive substitutions of capital for labor in Europe.

None of this is to say that there are not gaps in coverage for family and medical leave in this country or that tragic examples of abusive treatment do not exist. Testimony before the Subcommittee has demonstrated otherwise. But, given the growing responsiveness of employers and the likelihood of this trend continuing, we believe that Congress should require more than anecdotal information, relatively isolated examples of problems, and questionable analogies to practices in foreign countries before it enacts virtually unprecedented legislation imposing mandated benefits.

Costs

What degree of economic burden would the Family and Medical Leave Act of 1989 place on employers? Supporters of the bill were pleased when GAO, in November 1987, estimated (based on a study of 80 firms in two metropolitan labor markets, Detroit and Charles-

ton, and other information) that the legislation would cost American businesses approximately $188 million annually at the 50-or-more-employees coverage threshold and $212 million annually at the 35-or-more-employees threshold. GAO reiterated these figures (in its February 1989 testimony before the Subcommittee) but also noted that recent marketplace changes (including health insurance premium increases of 23 percent between 1985 and 1988) would likely increase the costs by about 30 percent, i.e., $244 million to $276 million. While the costs projected by the GAO are significant, the estimates significantly understate the true cost of the legislation, for several reasons:

(1) Health Care Coverage Costs; Other Costs.—Most importantly, GAO's cost estimates reflect *only* the cost of required continuation of health insurance coverage. Even accepting GAO's estimates—a study by Robert Nathan Associates estimated that costs for health care coverage could range from $188 million to $573 million annually, depending on certain factors—it is important to note that other costs have been ignored. Based on its limited survey of 80 firms in two marketplaces, GAO determined that *no costs*, including losses in productivity, would be incurred as a result of absences of employees on leave, concluding that temporary replacement workers could be hired at costs comparable to that of the employee and, where no replacement was hired, the employee's work could be assumed by other employees on the job. No conclusion has been more strongly disputed by the business community—the very entities with actual experience in managing workforces and producing products—on the basis that it ignores significant costs associated with recruitment of a new, replacement employee, training (by other employees) of the replacement employee, the overall substandard performance during this period of training and adjustment, and the resultant lower levels of productivity. Further, if no replacement worker is hired, the work of the employee on leave either is not performed or must be undertaken by fellow employees; either situation results in reduced productivity which will evidence itself in lower rates of production or a lesser quality in goods produced. Further, when work cannot be easily assumed, overtime wage costs may be incurred.

The GAO analysis appears to assume that workers are completely fungible and can be placed in and out of different jobs without difficulty, like widgets, without training or job acculturation. It also assumes that most companies are normally operating at such levels of inefficiency that a worker here or there will not be missed and that his or her work can be easily spread out among other workers without impairing output. While these assumptions may be true about some types of jobs and some companies, surely they do not typify the American workplace.

While it is difficult to determine, as the employer community has acknowledged, the costs of this legislation over and above those of health care coverage, some estimates can be made.

The American Society for Personnel Administration (ASPA) estimates that the cost of recruiting a new employee usually amounts to about one-third of the new employee's annual salary; that the cost of training a new employee usually amounts to about 10 percent of the new employee's annual salary; and that the cost of pro-

ductivity down time (the time lost while the new employee learns the job) often amounts to 50 percent of the first year's salary. Using the ASPA guidelines, the approximate cost of replacing an empoyee earning an annual salary of $12,000 would amount to $4,000 in recruitment expenses, $1,200 in training costs, and $6,000 in lost productivity—a total of $11,200.

GAO, in its report, estimates that if H.R. 770 were to be enacted, 1,675,000 employees would take advantage of it in the first year. GAO also estimates (based on its survey of 80 firms) that 30 percent of those workers would be replaced with temporary employees during their absence. If only 30 percent of the 1,675,000 employees were replaced during their absence, the cost to employers (based on the above calculations) just for temporarily replacing employees could conservatively be estimated at $56,280,000.

Of course, this estimate does not cover losses in productivity or overtime wages which would likely result when an employee is not replaced. These costs defy dollar quantification but are, nonetheless, significant.

(2) Definitions.—GAO found the critical definition of "serious health condition" in the bill unworkable for the purposes of estimating costs under its survey. It, therefore, defined the term for the purposes of estimating cost for leave for the care of an ill child and for employee disability as that requiring thirty-one days of bed rest and, for the purposes of estimating cost for leave for the care of an ill parent, as that requiring long-term assistance requiring daily assistance with personal hygiene, mobility, or taking medication. In fact, the criteria provided for leave for a "serious health condition" under H.R. 770 (as discussed in more detail below) is so broad and general that it would apparently allow leave for many less severe conditions not covered by GAO's definition, greatly increasing costs. Indeed, GAO itself estimated in 1987 that costs of the bill would increase by another $120 million (increased by an additional 30 percent for 1989) if serious illness was defined as requiring twenty-one days or more of bed rest rather than thirty-one days. H.R. 770 would likely allow medical leave for less serious conditions not even meeting this test.

(3) "Key Employee" Exemption.—GAO, based on its own descriptions of the requirements of H.R. 770, has apparently seriously misinterpreted the scope of the so-called "key employee" exemption of the bill, assuming it completely exempts from coverage employees who are among either the highest paid 10 percent or the five highest paid employees in the employer's workforce, whichever is greater. In fact, the relevant provisions of the bill are much more limited, only exempting such employees from the right to reinstatement if denial of such reinstatement would be necessary to prevent "substantial and grievous economic injury to the employer's operations." Further, even assuming that an employee met this rigid criteria, he or she would *still* be entitled to health benefit coverage—the very costs which form the basis of the GAO estimates.

Similarly, but less importantly, GAO also apparently views the "new child" leave provisions as limited to birth or adoption. In fact, they are broader, also including children placed into foster care.

(4) Care for New Children.—GAO assumed that only women would take leave to care for new children; H.R. 770, of course, provides for paternity leave.

(5) Leave Offset.—The GAO cost analysis assumes that women will take the full 10 weeks of leave allowed under the bill, but that about 6 weeks of this leave will be their available paid vacation, sick, and disability leave. However, H.R. 770 limits the substitution of any employee's leave for any part of the 10-week period to vacation, personal or family leave. Therefore, under H.R. 770, an employee would not be able to take sick leave or disability leave as a part of the allowed 10-week family leave.

(6) Unemployment Insurance (UI) Costs.—Significant, additional UI costs will result as workers hired to replace employees on leave are terminated upon the return of the employee. According to the UBA, a nonprofit association which studies the UI system, replacement workers hired for ten weeks at the federal minimum wage could, depending on various factors, then qualify for UI benefits in nineteen states and the District of Columbia. A replacement worker earning the average hourly wage of $9.23 (as estimated in the April 1988 Employment and Earnings Report of the U.S. Bureau of Labor Statistics) could qualify for UI benefits in thirty-seven states and the District of Columbia.

(7) Future Costs.—GAO estimated in its February 1989 testimony that its 1987 estimates should be increased by 30 percent. Given the ever-escalating costs of health care, the costs of this bill will continue to increase dramatically. What will the costs be next year, in two years, in four years?

(8) Litigation Costs.—The cost will probably be enormous. In this regard, the experience of the U.S. Department of Labor in administering the Veterans' Reemployment Right [VRR] Act is instructive. The VRR Act, sharing similarities to the Family and Medical Leave Act, provides that an employee taking leave to serve on active duty in the military, as a reservist, or as a member of the National Guard must be offered reinstatment to his or her same position, or to a comparable position, following service. Between 1984 and the second quarter of 1988, the Department of Labor received approximately 14,000 inquiries and processed 7,532 cases under this statute. Obviously, the number of employees covered by H.R. 770 is infinitely greater than that of the VRR Act. The implications for future litigation are clear.

(9) Public Costs.—While beyond the scope of the GAO study, it should also be noted that public sector costs will be significant—either in terms of additional Department of Labor enforcement and administrative personnel or in terms of reduced enforcement of current programs as personnel are shifted to meet the demands of this legislation.

In sum, the probable costs of this legislation will be considerable, and certainly much more than its proponents claim. In a time of continuing competitive difficulties and a trade deficit of $9.5 billion Congress has the responsibility to enact laws which create a positive economic climate, not laws with uncertain benefits which will further burden American businesses and reduce job growth in this country.

Flexibility or mandate

It is important to note that the trend in employee benefit programs for the past decade has been away from providing a single benefit program to which all employees must subscribe, and, rather, towards serving up benefits "cafeteria style." Recognizing that a business can allocate only a certain dollar amount per employee for benefits, cafeteria plans offer a broad range of choices which permit each employee to select those benefits that meet his or her individual needs.

In sharp contrast to this trend, H.R. 770 would legislate against flexible benefits. It would require that each employee's benefit "budget" be spent on a benefit that the employee may neither want nor need. But why should a single employee, or a married employee with no children, be forced to accept from his or her employer a benefit that will never be needed, while at the same time forfeiting a benefit which may be needed? Not surprisingly, according to the "Employee Attitude Survey on Flexible Compensation" (Swinehart Consulting, Inc.), 91 percent of women and 80 percent of men prefer flexible plans as opposed to those with fewer standard, required benefits.

The adverse impact of mandated, fixed benefits such as H.R. 770 would require on the availability of other benefits to employees was touched upon in various testimony before the Subcommittee but was perhaps best summarized by Dr. Earl Hess, founder and president of Lancaster Laboratories, testifying on behalf of the U.S. Chamber of Commerce on February 7, 1989:

> [A]ny mandated benefit is likely to replace other, sometimes more preferable, employee benefits. A mandated benefit, regardless of now worthy it may be, does not increase the employee benefits "pie"; rather, it redivides it in a manner dictated by powerful special-interest groups. If one employee benefit is required, then another benefit, perhaps one more greatly desired by the employees of a particular company, must be eliminated or reduced to offset the costs associated with the new mandated benefit. Employee benefit packages differ among employers according to their affordability and the needs of individual employers and their employees.
>
> Parental leave deprives employers and employees of the right to be flexible in negotiating alternative benefits, such as longer vacations or better medical insurance. All employees—male, female, young and old—will be subject to a uniform parental leave law, whether they are new parents or not, whether they like it or not, or whether they can afford to take advantage of it or not. Federal legislation ignores the irrelevance of benefits that are meaningful only to a portion of the workforce. . . .

In short, mandated benefits help, if anyone, only the few employees who fall within the legislated criteria while benefits available to other employees diminish.

Expansion of legislation

If H.R. 770 were to be enacted, it would be difficult for Congress to resist future demands to impose paid mandated leave on employers, vastly increasing costs. H.R. 770's predecessors required that a Commission be established to study the possibility of mandating paid leave, and—while this provision was dropped in H.R. 770—it is highly unlikely that this goal has been abandoned. Indeed, S. 345, H.R. 770's companion bill, retains this mandate. Further, testimony presented to the Committee on March 5, 1989, by the Women's Legal Defense Fund assures us that this goal has simply been placed in abeyance:

> If we truly had a national policy of accommodating families and work, we might have a whole range of employer requirements, tax incentives, and other public policy mechanisms to ensure the effectuation of that policy. At the very least, employees would have the right to "paid," job-guaranteed leave. . . .

Similarly, it would be difficult for Congress to resist future demands to expand the types of leave required by this bill to cover other special-interest groups. History has demonstrated that Congressional programs usually expand, rarely contract.

Discrimination

Finally, it is an unfortunate reality, but a reality nonetheless, that this legislation will likely result in increased discrimination against women in hiring and promotions.

Ms. Cynthia Simpler, Personnel Manager for James River Corporation, testifying on behalf of the American Society for Personnel Administrators before the Subcommittee on February 7, 1989, cogently discussed this probable result of H.R. 770:

> There are other, less apparent costs involved as well. Since working women will be viewed as the most likely candidates for parental leave, hidden discrimination will occur if this bill becomes law. Women of child-bearing age will be viewed as risks, potentially disrupting operations through an untimely leave. Anyone who has had a secretary out on maternity leave knows how chaotic the office is when an inexperienced temp steps in to take her place. Who takes care of the territory when a sales representative drops out for ten weeks? Who will close the books if the only accountant in the plant goes out on parental leave? Unlike men, women must still constantly prove that they can handle the responsibilities of work and family at the same time. If this legislation passes, it will only reinforce the prejudices which already exist. Consequently, we will find "employment opportunities" in less critical, lower paying jobs.

II

Even assuming that some form of federally mandated family and disability leave was appropriate, we would continue to oppose enactment of H.R. 770 because it remains a legislative initiative that

is fundamentally flawed. The structural framework that it would establish for the administration of the required benefits would be unworkable, as a practical matter, would fail to allow for legitimate needs of employers in orderly managing their workforces to produce a quality product, and would likely lead to extensive litigation as employers and employees disagree over the proper interpretations of the many vague provisions in the bill. While it is here impossible to discuss all of these problems in detail, the most significant can be summarized under the following areas:

(1) Definitions.—The definitions of "serious health condition" and "health care provider" are particularly critical to the implementation of H.R. 770's requirements. For example, an employee may take family leave for the care of a child or parent suffering from a "serious health condition," and may take temporary medical leave only when suffering from a "serious health condition" that renders him or her unable to perform the functions of his or her position. Further, an employer may require certification by a "health care provider" as to the existence of the "serious health condition" claimed as a basis for leave and may also condition an employee's return to work upon a certification by the employee's "health care provider" that the employee is able to resume work. Despite the key role that these two concepts play in the implementation of this legislation, they are defined in grossly broad, general terms which will lead only to misunderstandings between employers and employees as to when leave is appropriate, resultant litigation, and, frequently, abuse of the rights provided by this bill. In brief, a "serious health condition" may be any condition which involves impatient care in various facilities or "continuing treatment or continuing supervision by a *health care provider*" [emphasis added]. What constitutes "continuing" treatment or supervision is less than clear. And while a limited definition of health care provider, such as a licensed medical physician, might provide some assurances that only truly serious conditions would qualify for leave, in fact the applicable definition is much broader, including any person licensed to provide health care services *or* any other person determined by the Secretary of Labor "to be capable of providing health care services." One might wonder what expertise the Secretary of Labor has to apply in evaluating medical service qualifications, and which individuals will, in fact, be ultimately approved by the U.S. Department of Labor.

Notably, as already discussed, even GAO was unable to utilize the definitions provided by H.R. 770 in calculating costs, adopting its own criteria for "serious health condition" leave. GAO expressly noted the difficulty of defining serious health condition under the bill:

> There is another matter related to the cost of this legislation that warrants attention, namely the need to clarify the definition of serious health condition under the provisions of the bill permitting leave to care for seriously ill children and temporary medical disability. Currently, there is *substantial room for varying intepretations.* For example, the cost of the bill would increase by nearly $120 million if serious illness is assumed to be 21 days or more

of bed rest rather than 31 days, as in our estimate. [Emphasis added.]

In sum, GAO was stating, and we agree, that the relevant definitions provided by the bill are unworkable and so elastic as to be meaningless. This key problem alone is fatal to H.R. 770.

(2) Broad Eligibility for Leave/Benefits; Exemptions.—Virtually all employees of a covered employer, regardless of the nature of their work or impact of their absence, will be eligible for family and medical leave under H.R. 770. Any employee who has worked one year for the same employer and has worked at least 1,000 hours (about 20 hours a week) qualifies. Thus, after one year of part-time work, an employee would be eligible for up to 25 weeks of leave over the next year. Unfortunately, the broad criteria established by the bill governing availability of leave make the likelihood of actual use of most or all of such leave more probable than might first appear. The problems with the definition of "serious health condition" and "health care provider" upon which entitlement for use of ill family care and temporary medical leave hinge have already been discussed. The extended "familial" relationships created by the legislation through expansive definitions of "son or daughter" and "parent" exacerbate this problem. Further, there is apparently no requirement that family leave actually be needed, in the sense that exigent circumstances exist, before it is taken. The birth, adoption, placement in foster care, or "serious health condition" of a "son or daugther," or the "serious health condition" of a "parent," alone triggers eligibility for the leave. Thus, an employee could apparently take 10 weeks off "in order to care for" a parent, a stepparent, or a parent-in-law even though (as would likely often be the case) the aid of the employee was not actually necessary—such as when another relative or professional attendant was tending to the needs of the ill "parent." Similarly, an employee could take 10 weeks off in order to care for a stepchild, or a child living with a divorced spouse, without regard to whether the employee actually had custody of the minor. And, of course, an employee could take 10 weeks off "because of" a child's birth, adoption, or placement in foster care even though an able-bodied, unemployed spouse was at home to care for the child. in sum, many facutal situations will qualify employees for the full 10 weeks of leave provided by this bill; emergency, pressing, or unusual circumstances need not exist.

Certain "key" employees are exempt from reinstatement rights under the bill but remain eligible for continued health benefits coverage. As already discussed above, this exemption—the only one in the bill—is extremely limited as much employees must be among the highest paid in the workforce and those whose reinstatement would cause substantial and grievous economic harm to the employer. It would seem that an exemption tied to the nature of an employee's work, availability of replacements, and impact of the employee's absence would have been more realistic.

Finally, it is worth emphasizing that as the bill contains few employee exemptions, it contains fewer employer exemptions. All types of employers above the 50/35 employee threshold, including State and local governments, regardless of the nature of their oper-

ations, are covered. Hospitals, police departments, firefighters, specialized private sector services—large or small—must be prepared (possibly at a moment's notice) to fill a position, however critical, with a temporary employee or do without the work of that employee. The Majority did add, at Committee markup, specially tailored provisions to address the needs of local public schools. Presumably, many other types of organizations may now also step forward expecting special consideration of their own unique problems.

(3) Employer Control of Leave.—Stated simply, H.R. 770 allows employees virtually unrestrained discretion as to when to take leave, how long to stay out on leave, and when to return, rendering employer workforce planning extremely difficult. "Serious health condition" leave can be taken in intermittent segments of time so long as "medically necessary." Proponents of the bill will argue that certain provisions require an employee to give "reasonable and practicable" notice of foreseeable leave for birth or adoption (but not, peculiarily, for foster care) and, similarly, to provide "reasonable and practicable" notice of foreseeable leave for planned medical treatment or supervision and to "make a reasonable effort to schedule" such leave without disrupting "unduly" the employer's operations, subject to the approval of the employee's "health care provider." However, the bill is silent as to what these fluid concepts mean and, more importantly, as to any sanctions, such as denial of leave, an employer could impose upon an employee for failing to meet these vague obligations. The "obligations" will be, therefore, essentially meaningness except in the most outrageous cases of noncompliance by an employee.

(4) Reinstatement and Health Benefits Rights.—Under H.R. 770, the employer must restore an employee to the same position or an equivalent (in all terms and conditions of employment) position, whenever, quite literally, the employee decides to return from leave, subject only to a right to request medical certification, by the employee's "health care provider," of the employee's ability to resume work. The employer clearly has no discretion to delay reinstatement for a short period of time or for any time at all, much less until an equivalent position becomes available. Nor does an employer have the right to require that an employee periodically report in (by telephone or in writing) as to the basis for continued leave or as to when he or she expects to return to work, if at all. The difficulties this poses for an employer attempting to decide whether a vacated position should be filled on a temporary or permanent basis or held open pending the uncertain return of an employee are not hard to imagine. Further, the right to require an employee to be certified by the employee's "health care provider" as able to resume work is an empty one given the uncertain definition of a "health care provider." An employer, if only for tort liability and workers' compensation reasons, should be allowed to require, at a minimum, certification by a licensed physician selected by the employer. (An amendment to this provision made at Committee markup—that nothing in the provision shall supersede local or State law or applicable collective bargaining agreements—does not resolve this problem. Many situations likely will not be expressly addressed one way or another by law or by bargaining agreements.)

Of course, during leave, health benefits coverage must also be continued under H.R. 770 as if the employee remained on the job. However, while the implicit *quid pro quo* to this continued coverage is the employee's return to work, there is no mechanism by which an employer could recover benefit costs from an employee who chooses, even voluntarily not to return to the position at the end of the leave period. The employer cannot ask an employee to guarantee his or her return (or even to provide written notice of his or her intention to return); indeed, the employee has every incentive not to state his or her intentions in order to secure the longest possible coverage. The inequity of this arrangement, together with the requirement that the employee be reinstated immediately upon return, is best exemplified by a related case study of an employer, as cited by the National Federation of Independent Business in its February 7, 1989, testimony before the Subcommittee:

> We recently had a young woman who requested three months' maternity leave which we granted. In order to hold her job, we employed a temporary employment service to fill this job as secretary/receptionist. During the leave, we paid all benefits. At the end of the leave, the individual informed us of her decision not to return to the labor force. In other words, we went through a period of inefficiency and delay in being able to seek and train a replacement (as well as a monetary outlay to cover fringe benefits) for an employee who did not return.

Other problems are also evident. For example, it is the apparent intention of H.R. 770's sponsors that the 18 to 36 month continuation of health care coverage requirements under Title X of the Consolidated Omnibus Budget Reconciliation Act (COBRA) would not begin until after it is clear that the employee would not be returning to work, rather than to allow computation of the continued coverage period from the time when leave began. Further, it is unclear how an employer who maintains a health plan to which an employee contributes through payroll deductions, a common arrangement, would collect payments from an employee on unpaid leave. Could an employer require cash payments before or during leave and terminate coverage when such payments were not forthcoming, or must the employer make the employee's payments and await the uncertain return of the employee to be reimbursed? These are real problems which are not properly addressed by this legislation.

(5) Enforcement/Damages.—H.R. 770 establishes an entirely new, overly complex enforcement scheme. Indeed, the enforcement provisions alone comprise close to half of the entire text of Title I (the non-federal sector requirements) of the bill. Under this novel scheme, an employee may file a charge with the Department of Labor, or file a private cause of action in Federal or State court with a jury trial. A charge must be processed by the Department through several levels, including administrative law judge hearings, along a very precise, expedited timetable. A failure by the Department to comply with "any obligation" in a "timely manner" would then entitle an employee to file in court, subject to certain conditions. Judicial review could follow in any case. The employer

"shall" be liable for damages for (1) lost wages and benefits plus (2) an amount equal to the greater of (a) lost wages and benefits or (b) *consequential* damages (including pain and suffering) capped at three times lost wages and benefits. (A successful "good faith" defense would allow the court to reduce damages to lost wages and benefits.) These provisions for enforcement and, particularly, damages are virtually unparalleled under other major labor laws. These typically provide for no private cause of action when an administrative review and enforcement mechanism has been established or, in those cases where such mechanism exists, at least, importantly, require a filing with the relevant agency first to allow that agency an opportunity to act on the charge and to engage in conciliation. Moreover, where a private cause of action is allowed, the applicable procedure typically does not provide for an extensive, quasi-judicial hearing review process within the agency.[2] Similarly, no known labor statute gives a complainant the vague right to bring a civil action after a charge has been filed on the basis that the agency has failed to meet "any obligation" under the statute in a "timely manner." Most importantly, no major labor statute provides for recovery for compensatory damages such as pain and suffering or for potential quadruple backpay liability. Typically, such statutes provide for backpay and benefits or, under some circumstances, double backpay and benefits.

Of course, unique rights may demand unique remedies, despite the resultant uncertainties and litigation costs, but it is difficult to believe that the rights afforded by this bill deserve greater protection than those provided under Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Davis-Bacon Act, the Service Contract Act, or the Rehabilitation Act of 1973.

Finally, it is worth noting that the Department of Labor, under two different secretaries serving in two different administrations, has twice expressed problems with these procedures. On September 9, 1988, then Secretary of Labor Ann McLaughlin wrote to Senator William Armstrong addressing the enforcement procedures in S. 2488, which were similar to those now in H.R. 770, noting that the Department was concerned with the bill's rigid enforcement procedures and time frames, lack of prosecutorial discretion, and potential workload impact on other enforcement programs. On March 7, 1989, Secretary of Labor Elizabeth Dole in informing various Members of the Committee on Education and Labor that she would create a new and costly Federal bureaucracy to administer its requirements.

III

In summary, we oppose this legislation because it is unnecessary, will result in excessive costs, will adversely affect the development

[2] The Migrant and Seasonal Agricultural Worker Protection Act and the Employee Polygraph Protection Act provide for an independent private cause of action with administrative law judge review of very limited issues. The Fair Labor Standards Act and the Equal Pay Act also provide for an independent private cause of action, but enforcement by the relevant agency is exclusively in the courts; cases are not processed through a quasi-judicial agency review mechanism.

of flexible benefit packages to the detriment of many employees, may result in increased discrimination against women, and will likely ultimately lead to future demands for paid family and medical leave and other benefits which Congress will be unable to resist. H.R. 770 is also a flawed legislative initiative in that it fails to address many legitimate concerns of employers in managing their work-forces and would generaly be unworkable in practice.

TOM COLEMAN.
TOM PETRI.
STEVE BARTLETT.
TOM TAUKE.
RICHARD K. ARMEY.
HARRIS W. FAWELL.
PAUL B. HENRY.
FRED GRANDY.
CASS BALLENGER.
PETER SMITH.

SUPPLEMENTAL VIEWS BY REP. STEVE GUNDERSON ON H.R. 770, THE FAMILY AND MEDICAL LEAVE ACT OF 1989

It is true as stated in the Majority's views on H.R. 770, that the United States has experienced a demographic revolution in the composition of its workforce in recent years. The participation of women in the labor force has risen from 19 percent in 1900 to more than 52 percent today—with 44 percent of the labor force being composed of women. Therefore, I believe that Federal legislation to encourage the provision of protected family leave in today's workplace is very definitely warranted. If there is a proper role for the Federal government to play in encouraging and possibly in providing job security protection to working family members, it is in this area. However, I have a number of serious concerns over H.R. 770 as it requires employers to provide leave that extends far beyond basic protections that should be provided under Federal law.

There is no question that at a time when 44% of our Nation's workforce is comprised of women, a number that is expected to increase to 47% by the year 2000, we must take into account the very special needs of this population in the workplace. This is expecially important since the vast majority of those women who work today, do so for purely economic reasons. Therefore enactment of Federal legislation to protect the job security of working parents may be justifiable, but only if we view our role as simply setting minimum standards under these limited circumstances, and only when efforts to encourage the provision of such leave have failed.

There is legitimate debate today as to whether or not mandates should be the vehicle for achieving such job protected leave for working family members. Mandates in this area run the risk of backfiring and resulting in increased discrimination in the hiring and promotion of women in their child-bearing years.

The Federal Government's first option should be to provide incentives to employers to provide leave for such family situations, especially to provide paid leave and cafeteria plans that offer employees flexibility in the determination of their individual needs. If and when incentives fail, then I feel that limited mandates should be considered.

However, if we decide to go the route of imposing mandates on employers to provide family and medical leave, as opposed to first trying the incentive approach, such requirements must be fair and reasonable, setting minimum standards of protection. We must not take the approach provided for under H.R. 770, which provides 10 weeks of protected family leave and 15 weeks of protected medical leave. This legislation runs the risk of allowing an employee to take 25 weeks of leave over a 1 year period. It is simply too much too soon.

In fact, the further we get away from the specific purpose of allowing families, particularly women, to have children while main-

taining essential employment, the less of a chance we have in seeing any form of family leave legislation enacted in this or any other Congress. When we begin to extend this job security protection into other areas, particularly when we mandate lengthy periods of medical leave and leave for caring for family members other than children, we run the risk of stifling efforts by employers who are increasingly providing flexible, individualized benefits plans to workers; of tying employers's hands, particularly where jobs are not easily filled temporarily; and of imposing inflexible policies that will result in too many workers being absent from the workplace at a single time.

In recent years a significant number of States have begun consideration of legislation that would provide job protection to working family members, but the bulk of these laws concentrate only on maternity or parental leave for birth or adoption of a child, and care for seriously ill children. Of those who have enacted legislation, most just provide minimum protections for working parents so as not to tie the hands of employers. Few of these extend leave for care of family members other than employee's children or for medical leave, and those who do such as Wisconsin provide very limited, basic protections.

Last year the State of Wisconsin enacted what I consider to be a reasonable approach to the issue of providing job protection to family members in need of taking leave for the birth or adoption of a child, for care of a seriously ill family member, or for serious illness. Under Wisconsin's law, employees who have worked for an employer for 1 year or more must be granted 6 weeks of upaid leave for the birth or adoption of a child; 2 weeks for care of a seriously ill child, spouse, or parent; and 2 weeks for a serious illness. Over a one year period an employee may take a maximum of 8 weeks of leave for any combination of the above. This law, while still in the implementation stages, provides what seems to be very basic protections to employees recognizing the changing needs of the working family member while still not going beyond the bounds of basic job protection.

For those of us who would like to see legislation enacted that would result in increased provision of job protected family and medical leave for all employees, we see H.R. 770 as reported, as a threat to the realization of such a goal. We may have a chance of enacting for the 1st time, a Federal policy that makes the workplace more sensitive to the needs of the working family. I hope that we can come to agreement on legislation that would provide meaningful incentives to employers to provide family and medical leave to working family members, or a least legislation that would provide limited but fair mandates which provide basic job protection for employees. If we find, after careful study that we truly need to extend this protection further, then we should do so at at later time.

STEVE GUNDERSON.

ADDITIONAL VIEWS OF THE HONORABLE MARGE ROUKEMA, H.R. 770, THE FAMILY AND MEDICAL LEAVE ACT OF 1989

I must reluctantly part company with my Republican colleagues on the Education and Labor Committee and endorse the Family and Medical Leave Act, H.R. 770, as legislation which represents good personnel practice and sound public policy. While I understand their reluctance to initiate additional "mandated employee benefits", I regard their opposition to this legislation as misplaced. This is the wrong issue on which to join the battle over federal mandates. By opposing the Family and Medical Leave Act, the most important piece of "pro-family" legislation to come before the Congress in years, we risk the perception that we simply do not care about the future of the American family. I don't believe this is a risk any thoughtful legislator—or employer—really wants to take.

When I first considered the original family leave bill, I was concerned that the legislation would cripple business competitiveness and employee productivity. However, after careful consideration of demographic changes in the work force and the pressing hardships faced by workers to meet fundamental family responsibilities, I concluded that a compelling case exists to support the concept of family leave, but that the form of the legislation had to be changed significantly to meet the legitimate concerns of business.

The initial bill was too far-reaching and insensitive to the realities faced by the average employer. Consequently, I negotiated a compromise which resulted in decreasing costs to business while maintaining operational flexibility. In its current form, the Family and Medical Leave Act will not interfere with business productivity. The details of the compromise are explained in the Report; however, I would like to outline briefly the most significant features of the compromise which address business concerns:

The original bill provided 18 weeks of family leave, 26 weeks of medical leave, covered firms with 15 or more employees, and workers with more than 3 months' service, including most part time employees. It did not contain an exemption for key employees.

The compromise dramatically reduced the leave periods to 10 weeks for family leave; 15 weeks for medical leave. The bill now covers businesses with 50 or more employees. Key employees are exempt from reinstatement rights, if their absence would cause an employer substantial economic harm. Only those employees who have one year of service and work at least 20 hours a week will be covered. This effectively eliminates most part-time and seasonal workers. Because of these changes, the costs of the bill were also greatly reduced. GAO estimates an annual national cost of $188 million per year in continuing health insurance benefits for those on leave. At a coverage threshold of 50 or more employees, the cost

of providing family and medical leave will be approximately $4.50 per employee annually. Further, GAO estimates that only 1 in 300 employees will avail themselves of leave under this legislation.

Family and Medical Leave is a minimum standard of job protection that is entirely consistent with the traditions of American labor law. It is completely consonant with such protections as child labor laws, anti-sweatshop codes, the minimum wage, and worker health and safety regulations. As society has changed, we have always adjusted our labor protection standards to meet new circumstances.

The relationship between the American family and the work place has undergone drastic changes. Only 10% of American families have both a mother and father present with their children.

Women now comprise 48% of the U.S. labor force. Nearly one fourth of these working women have spouses who earn less than $15,000 per year. Nearly one half of all working women have children under 18 years of age and the proportion of women with children under age 6 who work full time has increased dramatically, and will continue to do so. These women work out of economic necessity. More often than not, they are the sole support of their children.

Since women are no longer at home to fulfill traditional caregiving roles as mothers, or to take care of ill elderly parents, society is undergoing a tremendous process of transformation. Fundamental family responsibilities must still be met—but the family is on a collision course with the work place. Family and Medical Leave is, accordingly, not some radical new employee benefit, as critics assert, but a simple minimum labor standard that intelligently responds to the demographic changes in the American work force.

Among the states with family leave statutes are California, Colorado, Connecticut, Kansas, Massachusetts, Montana, Oregon, Pennsylvania, Washington and Wisconsin. Numerous other states have family leave laws under consideration. Several states have enacted family leave laws whose provision are considerably more generous than those contained in H.R. 770. Businesses in those states are functioning very successfully with job protection guarantees. In the many hearings the Subcommittee on Labor-Management Relations has held on this legislation, not one business in any state with family and medical leave laws has come before us and stated that maintaining health insurance and job security for their workers was wreaking financial havoc in their business. No family and medical leave state has told us that these laws were destroying job growth or business productivity.

We can only conclude that the opposition to the Family and Medical Leave Act is based on the same considerations that led opponents, in another era, to assert that the Fair Labor Standards Act would disable job growth and impose unbearable burdens on employers. Notably, since FLSA was enacted in 1938, American business has prospered. In good economic times and in bad, minimum federal labor standards, such as Family and Medical Leave, post no threat to economic prosperity.

I am confident that passage of this bill will bear out our past experience with other such labor standards. Family and Medical

Leave is indeed a modest proposal to provide job security to working Americans during a family medical crisis. It is an issue of fundamental fairness to American families.

MARGE ROUKEMA, M.C.

INDIVIDUAL VIEWS OF REPRESENTATIVE GOODLING

My decision to oppose H.R. 770, the Family and Medical Leave Act of 1989, was not easily made. Persuasive arguments, as with many controversies before Congress, can be made in support of and in opposition to the legislation.

It is clear that employers are becoming more responsive to the family and medical needs of their employees and that this trend is likely to continue, if for no other reason than it makes good business sense in light of demographic changes in America's workforce. Nevertheless, it is also clear that gaps in employer policies exist and that, while many employers without formal policies no doubt accommodate their employees on a case-by-case basis, some workers will be denied even minimal leave and job protection rights during times of family crises.

Whether this patchwork of employer practices is viewed as the glass being half empty or half full, I do not believe that federal legislation mandating leave is the proper response. The difficulty with such a mandate is that it inherently eliminates an individual employer's flexibility to effectively run a business while meeting the legitimate personal needs of his or her employees. Mandated leave constitutes a "one size fits all" solution when the underlying premise to the solution—at least as applied to a universe as diverse as the American workplace—is patently false. For example, a large corporate, white-collar office might well be able, without difficulty, to provide ten weeks of paternity leave for the birth of a child, but a smaller employer whose employees are engaged in individual, skilled specialties may simply be unable to spare, for many reasons, an employee for that long of a period. Does this mean that a smaller employer will refuse to accommodate his or her employees and deny all leave? To the contrary, the employer is likely to fully understand the value of the employee and will undoubtedly attempt to work out some type of reasonable, if less than perfect, arrangement for leave which will both retain the employee's loyalty and allow the employer's business to operate. Of course, between these two examples are a myriad of other kinds of businesses and workforces, often in a constant, fluid state of change. Legislation such as H.R. 770 which eliminates an employer's discretion in developing leave policies fails to recognize this reality and may well impose an impossible burden on many businesses, ultimately to the detriment of both employers and employees. In this regard, I share the Secretary of Labor's concerns, as noted in her March 7, 1989, letter discussing H.R. 770, that the bill will "impose the costs of leave mandatorily on employers regardless of their ability to absorb such costs thus reducing their productivity and U.S. competitiveness."

For these reasons, and others—I am particularly concerned with the possibility that the bill may have an adverse impact on the

availability of other employee benefits and may result in increased job discrimination against women—I cannot support H.R. 770. Nevertheless, I recognize, as must others who oppose this bill, that there may come a time when we will need to reexamine our position. The employer community has represented that it is becoming increasingly sensitive to the family and medical needs of its employees and is voluntarily, on a growing basis, accommodating those needs. Time will tell whether these promises and predictions become reality in the form of virtually universal employee coverage under some form of reasonable leave policy, or whether legislation ultimately becomes necessary.

Finally, I would like to particularly commend Rep. Roukema for attempting to find a common ground on this legislation between the opposing parties. The current bill being reported by the Committee is largely a result of her successful negotiations over many difficult issues, and I believe that all members of the Committee would agree that it is much improved over earlier versions. Indeed, in the heat of the current debate, it is easy to lose sight of what the original Family and Medical Leave Act, as introduced in the 100th Congress, included: coverage of employers with 15 or more employees, 18 weeks of family leave, 26 weeks of temporary medical leave, eligibility after 3 consecutive months of employment or 500 hours, and a mandate to study the feasibility of paid leave. The very significant changes in each of these, and other, areas now reflected in H.R. 770 are largely due to the efforts of Rep. Roukema. While many members will continue to oppose the bill, it can hardly be gainsaid that these changes alleviated many of the concerns of the employer community.

WILLIAM F. GOODLING.